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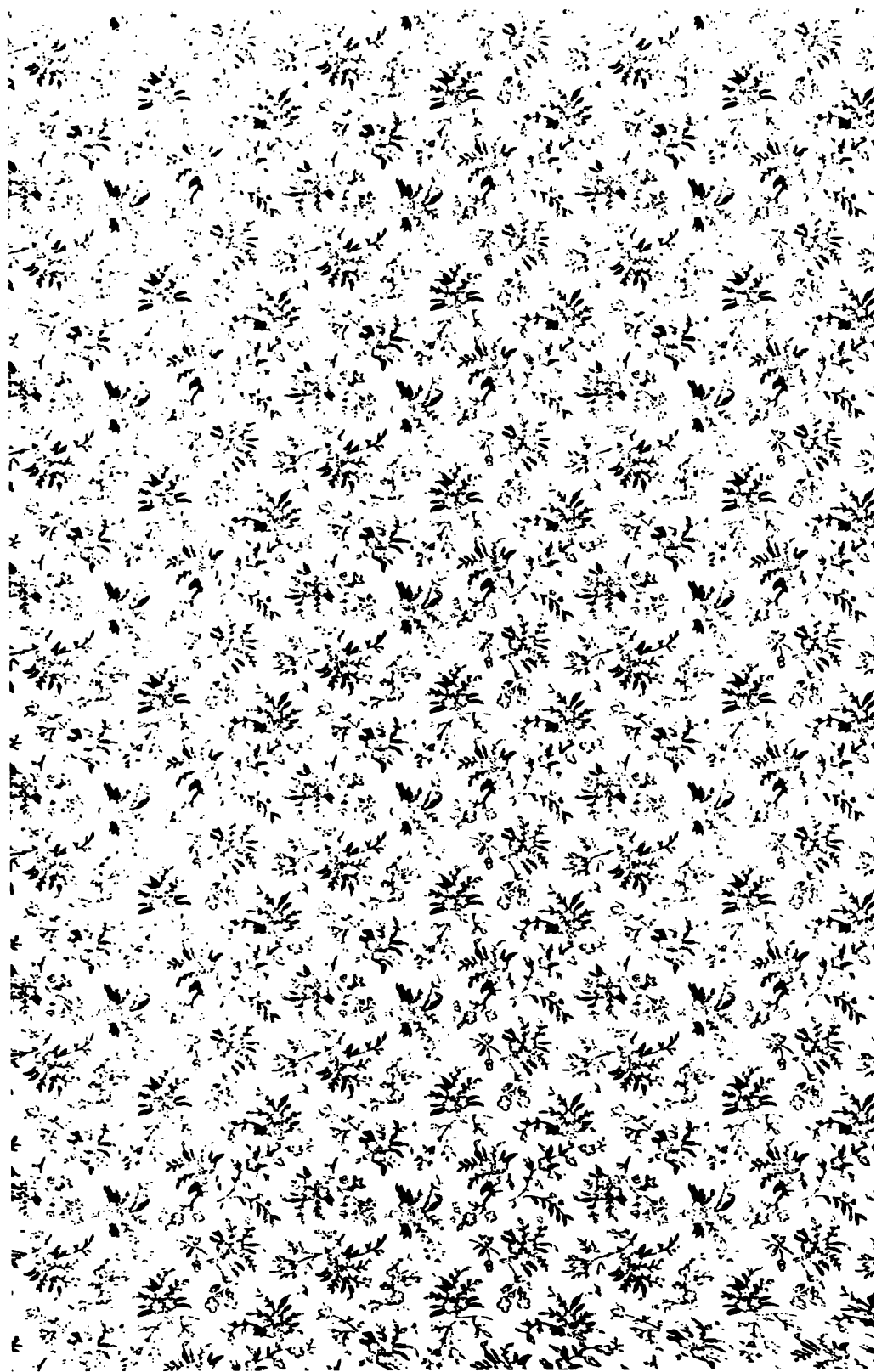
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ARDES SCIENDIA VERITAS







HUMPHREY MARSHALL.

1760—1841.

THE

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OF

PHREY MARNE

CONSTITUTION

THE HISTORY OF THE UNITED STATES
FROM THE FIRST SETTLEMENTS TO THE
PRESENT TIME. BY J. W. F. DUNN, ESQ.
OF THE BAR AT NEW YORK. VOL. I.
CONTAINING THE HISTORY OF THE
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MARSHALL'S HISTORY OF THE UNITED STATES

BY J. W. F. DUNN, ESQ.

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MANCHESTER, N.Y.:
THE NEW PUBLISHING COMPANY
1892.



JOHN R. H. H. H. H.

JOHN R. H. H. H. H.

THE
LIFE AND TIMES
OF
Hon. HUMPHREY MARSHALL,

SOMETIME

AN OFFICER IN THE REVOLUTIONARY WAR; MEMBER FOR THE
DISTRICT OF KENTUCKY OF THE VIRGINIA CONVENTION (1788)
WHICH ADOPTED THE FEDERAL CONSTITUTION; MEMBER
FROM FAYETTE COUNTY, KY., OF ONE OR MORE OF
THE CONVENTIONS AT DANVILLE LOOKING TO THE
ERECTION OF KENTUCKY INTO A SEPARATE
STATE; SEVERAL TIMES A MEMBER OF THE
KENTUCKY LEGISLATURE; SENATOR
IN CONGRESS FROM 1795 TO 1801;

AUTHOR OF MARSHALL'S HISTORY OF KENTUCKY,

ETC., ETC., ETC.

By A. C. QUISENBERRY.

WINCHESTER, KY.:
THE SUN PUBLISHING COMPANY,
1892.

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R. H. Hook
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INTRODUCTORY.

THE elder Humphrey Marshall, the stormy petrel of Kentucky's earlier years, presents one of the most unique and picturesque figures that has yet been furnished by American history. So strange and varying were the fortunes and vicissitudes of his tempestuous career, that the recital of them by a more competent biographer than the present one would prove more striking and more interesting than a romance.

He was a man of the most inflexible integrity, of the highest order of intelligence, and of the most dauntless moral and physical courage. He had, at one time, a flattering promise of a long and illustrious public career, but his very integrity and force of character proved the ruin of his political hopes. Never for an instant would he hold his convictions in abeyance as a matter of policy. With him to think was to say and to do, regardless of consequences.

His loftier political aspirations were frustrated by a cabal between the flower and the fruition of whose ambitions he interposed the chilling frost of his unpurchaseable integrity. As he could neither be seduced by the prospect of power nor influenced by the promise of gain to depart from the line of duty and the pathway of honor, the cabal, by means they knew only too well how to employ, crushed him to the earth, as they fondly imagined. His character was blackened in a thousand insidious ways, and every means that could be devised to disgrace, degrade and humiliate him, was put into operation. Mobs were even incited to inflict upon him personal outrage. The leaders in the dark rooms pulled the wires, and innumerable puppets assailed him in innumerable ways, until it came to be said that he was the best hated man of his day. But at this distance of time, and in this era of Kentucky's history, the scenes

have shifted; and while the memory of many of the men who persecuted him rest under either absolute disgrace or else the shadow of suspicion, no disinterested persons doubt the integrity of Humphrey Marshall's purposes, however much they may think he may have been led into error by the strength of his prejudices. To this generation of Kentuckians it is hardly necessary to say more in vindication of the man than that he he was the bosom friend and possessed the perfect confidence and esteem of Washington.

The people of Kentucky should have a biography of so illustrious and so remarkable a Kentuckian as Humphrey Marshall. The author of this sketch had long hoped that such a work might be written by some historian competent to do it justice, and, at last, in despair of this, undertook it himself.

Humphrey Marshall has now lain for fifty years in his grave. After so long a time has elapsed it has been an exceedingly difficult matter to collect data for the work. Mr. Marshall himself left no materials for his biography. If he did this writer has been unable, after a most patient and thorough inquiry, to find them. Much matter which would have added greatly to the interest and value of this biography has been, by the lapse of many years, irrecoverably lost. As it is, the compiler of the work, snatching when he could a few hours from the daily requirements of a busy life, has gone through a long and laborious search among public records, old pamphlets, files of old newspapers, &c., &c., and appropriated for his purpose every available scrap of information which he thought might serve to make his work full, authentic, and interesting. This labor has also been supplemented by an extensive correspondence—numerous letters having been written to all parts of the country, and to every person from whom there was reason to believe that information of value concerning Mr. Marshall might be obtained. In this way much authentic tradition and many actual observations have been gathered. But, after all, it is feared that the work is very imperfect and meager.

This biography of Humphrey Marshall was prepared for the Filson Club, of Louisville, Ky., before which body it was read at the meetings for December 1890, and January and February, 1891.

Col. Thomas Marshall Green's "Spanish Conspiracy," though printed more than a year ago, was not written until after this sketch had been

completed. It is earnestly recommended for the perusal of all who may become interested in this book; for the two works, without any intention or prearrangement, are supplemental to each other. The "Spanish Conspiracy" is an important contribution to Kentucky History; and its author has uttered it in no uncertain tones.

A. C. QUISENBERRY.

WASHINGTON, D. C.,
October 16, 1892.



THE LIFE AND TIMES OF THE HON. HUMPHREY MARSHALL,

Author of the History of Kentucky.

Paternal Ancestry.

In the Northern Neck of Virginia there settled at an early day many families which have since become distinguished, socially and politically. Among these the Marshall family is by no means the least. During more than a century of the sluggish, monotonous life, which preceded the Revolution they, like the most of their neighbors, were plain, substantial people, not at all distinguished for anything, perhaps, except the simple integrity of their characters.

But the outbreak of the Revolution was the signal of a revolution indeed in Old Virginia. Almost imperceptibly the race of plain, simple planters became a race of statesmen and soldiers, nearly peerless on the field and in the forum. While the Virginians as a whole became distinguished in this respect, the "Tuckahoes," or citizens of the Northern Neck, became pre-eminent in the same respect among Virginians. The county of Westmoreland alone furnished the illustrious names of the Washingtons, the Lees, the Marshalls, the Madisons, the Monroes, the Popes, and many others; and of these the Marshall family has furnished many members who have been distinguished in every public and private walk of life, and who have contributed no small share to the lustre of their country's history.

There are families of the name of Marshall in England, Ireland,

Scotland and Wales, but it is not now known from which of these the family of Virginia Marshalls sprung. There are traditions, indeed, but they rest upon no authenticated records, or proof of any kind, and even the traditions vary. The farthest back to which they can be *certainly* traced is to Thomas Marshall, a planter in the Washington Parish of Westmoreland County, Virginia, who is supposed to have settled there about 1649. The tradition held by Dr. Louis Marshall, of Woodford County, Kentucky, during his lifetime, has been accepted with some degree of credit by later members of the various branches of the family, and is certainly as authentic as any mere tradition could be. It is that the Thomas Marshall mentioned above, was the son of a John Marshall, which John Marshall was the son of a Thomas Marshall, an Irishman, who had been in the army of Charles I., and who had left England and come to America during the usurpation of Cromwell.

In what is called "The Acts of Settlement of 1649" in the "Landed Gentry of Ireland in Cromwell's Time," there is a list of officers to whom arrears of pay were due for services in the royal army of Charles I., and in this list stands the name of "Lieutenant-Colonel Thomas Marshall." An unsuccessful effort has been made to connect this man with the Virginia Marshalls, but he is, in all probability, the Irish Royalist contemplated in Dr. Louis Marshall's tradition.

On the other hand, in a list of persons sentenced to be transported from various English and Irish ports, is the name of Thomas Marshall, an Irishman, who was transported to the Barbadoes for participation in Monmouth's rebellion against James II., and as many people came from the Barbadoes to Virginia, this man may have been the same Thomas Marshall to whom the Virginia Marshalls can be traced with absolute certainty.

I.
Thomas Marshall had an estate of twelve hundred acres of land, located in the Washington Parish of Westmoreland County, Virginia, two hundred acres of which he purchased from Major Francis Wright, whose wife was the daughter of the first John Washington and Anne Pope. He died in 1704, and by his will, which is still to be seen among the records of the Westmoreland County Court, he left all his land to his eldest son, WILLIAM MARSHALL, who was the ancestor of Gen. Robert An-
Ha

dersoh (of Fort Sumpter fame) of Gov. Charles Anderson, of Marshall Anderson, Larz Anderson, William Anderson and John Anderson; of Chief Justice William S. Pryor; and of the Marshalls of Henderson, Ky.

Thomas Marshall's second son, John Marshall, married Elizabeth Markham, and by her had four sons; viz: II 6

THOMAS, who was a Colonel in the Revolutionary army, and the father of Chief Justice John Marshall, of the United States Supreme Court; of Dr. Louis Marshall; of Alexander K. Marshall; of Mary Marshall (who married Humphrey Marshall, the subject of this sketch) and of Nancy Marshall, who married Joseph Hamilton Daveiss; III

WILLIAM, an eloquent and famous Baptist preacher of early days, who was the ancestor of the Marshalls of Bracken County, Kentucky;

JOHN, who married Mary Quisenberry, and became the father of Humphrey Marshall; and

MARKHAM, who was the ancestor of Gen. Duff Green, the editor of the old *Washington Telegraph*, which was so famous and so powerful in its day.



Maternal Ancestry.

As has been stated, John Marshall married Mary Quisenberry, and to them was born, among numerous other children, Humphrey Marshall, the subject of this sketch. Mary Quisenberry was the daughter of Humphrey Quisenberry, a wealthy planter of the Washington Parish, of Westmoreland County, Virginia, and in whose honor Humphrey Marshall was evidently named. He was the neighbor of the elder John Marshall, as his grand-father, John Quisenberry, had been of the first Thomas Marshall; and they were all buried in the Pope's Creek Cemetery, an old colonial burying ground in Westmoreland County, where inscribed tombstones once abounded, but where not one is now to be seen. Humphrey Quisenberry died in 1776, and his will, probated that year, gives the bulk of his property to his children by his second wife; but other bequests to his elder set of children give some information about them, and show that one of them, his daughter Jane, was the wife of Lawrence Pope. There is no certain proof of it, but it is alto-

gether probable that this Lawrence and Jane Pope were the ancestors of that John Pope who was afterwards a Senator in Congress from Kentucky, and who was Humphrey Marshall's political and personal friend throughout life.

The Quisenberrys, like all their neighbors prior to the Revolution, were plain, respectable people, and they were among the earlier settlers of Virginia, coming there from England at a very early day. A numerous family of them were living in 1653 in that portion of Northumberland County which was that year cut off and erected into Westmoreland County. The exact date of the arrival of the first of the name from England is not certainly known.



Humphrey Marshall's Birth and Youth.

John Marshall and Mary Quisenberry were married about 1758 or '59. Both had been born and reared in the Washington Parish of Westmoreland County, but some time before his marriage John Marshall had bought land in Fauquier County, where his brother, Col. Thomas Marshall, had also purchased an estate, and to that county he took his young wife, and there they set to work to establish a home. They were in very humble circumstances, and they had a large family of children, nearly all of whom afterwards went to Kentucky and became wealthy.

John Marshall was not a Baptist preacher, as is stated in Perrin's "Pioneer Press of Kentucky," nor was he, indeed, a preacher of any kind. He was a plain farmer; a man of good, strong sense, but unambitious, and unassuming.

Humphrey Marshall was born in Fauquier County, Virginia, in the year 1760. There is little or no account of how he spent his boyhood days. There is a tradition that he never went to a school, but that his cousin, Mary Marshall, who afterwards became his wife, and who was his senior, taught him to read. She was a very intellectual, gifted, and highly cultivated woman, who from the beginning took naturally to books. Gen. Duff Green, the editor of the old *Washington Telegraph*, whose mother was a daughter of Markham Marshall and a full first

cousin to both Humphrey Marshall and his wife, in giving an account of his boyhood and youth, says: "Mrs. Humphrey Marshall gave me the use of books from her library, and when I returned them she examined me upon what I had read." This was her custom with many.

Certain it is that Humphrey Marshall, by the display of his natural and instinctive manliness and integrity, early attracted the fondness and esteem of his uncle, Col. Thos. Marshall, who was, in very many respects, perhaps, the greatest of all the Marshall race, and who was Humphrey's patron and benefactor in his youth, and his ardent friend throughout life. Col. Thomas Marshall always had employed in his family educated Scotchmen as private tutors for his children;* and, after the first pleasant lessons from his future wife, it is altogether probable that such education as Humphrey Marshall had, he received from these tutors in the family of his uncle.



His Services in the Revolutionary War.

At the age of about eighteen years, Humphrey Marshall enlisted for a term of three years in the Virginia State Regiment of Artillery. All accounts of his services in that war now appear to be lost, except the following records in the offices of the Commissioner of Pensions, at Washington, and of the Register of the Land Office, at Richmond, Virginia, which are here given entire; viz:

DEPARTMENT OF THE INTERIOR,
BUREAU OF PENSIONS,
Washington D. C., Sept. 18, 1888.

Sir:—In accordance with your request of the 12th for information of Humphrey Marshall, an officer in the Revolutionary War from Virginia, you

* Justice Joseph P. Bradley, of the Supreme Court, in an article on Chief Justice John Marshall, in the *Century Magazine* for September, 1889, says:

"His father, Col. Thomas Marshall, was an intimate friend and old schoolmate of Washington, and was associated with him in the surveys of the Fairfax estates * * * His mother was Mary Keith, daughter of the Episcopal clergyman of the Parish, and educated in the choicest English literature of that day. The home was a constant and regularly organized school. The best English poets and historians were made as familiar as household words, and the mathematical and other sciences were not neglected. * * * When he had become sufficiently advanced a private tutor was procured to initiate him into the mysteries of classical lore. Rev. James Thomson, an Episcopal minister from Scotland, was employed for this duty."

Humphrey Marshall undoubtedly enjoyed all these advantages.

will receive herewith enclosed, a statement on separate sheets of so much history as is contained in his application for pension.

Very Respectfully,

JOHN C. BLACK,
Commissioner.

In July, 1832, he stated that he was a native of Virginia, and residing in Franklin County, Kentucky; and that he was an officer in the Revolutionary War in 1778-'9-'80 and 1781; and on February 6, 1781, he became a supernumerary officer, at which date he was a Captain-Lieutenant, having been in 1778 a 3d Lieutenant, and in 1779 a First-Lieutenant in a regiment of Virginia Artillery commanded by Col. Thomas Marshall of the State Line. He enlisted to serve three years, being first attached to the company of Capt. Elisha Edwards, and afterwards to others. He entered the service in said regiment on January 4, 1778, as a Cadet. (There were many cadet appointments during the early part and in the middle period of the war.)

JOHN MARSHALL (probably a Captain in the Virginia Line), a witness, testified that the Act for raising the above State Regiment of Artillery, was passed by the Legislature at its Spring Session in 1777; and his father, Col. Thomas Marshall was appointed to the command, and left the Northern Army, where he commanded the Virginia Third Regiment of the Continental Line, in December, 1777, for the purpose of visiting his family before taking charge of the new regiment. (The witness was then in the historic camp of Valley Forge). Col. Thomas Marshall appointed Humphrey Marshall a cadet or subaltern officer in the Artillery regiment. When the "term" of the three years men expired the Virginia regiments were broken up, and the few men who had enlisted for the war were marched into Virginia; and the officers not needed came home to wait until measures should be taken to procure men. In March, 1780, the witness went to Williamsburg, where he remained until July. In March and April he was occasionally at York, where a portion of the regiment was stationed, and where he regularly saw Humphrey Marshall in actual service. A part of this regiment composed a part of the corps which marched South under Lt.-Col. Porterfield, but he did not recollect whether Humphrey Marshall marched with the detachment, or not; rather thought he did not. (Deposition taken in Richmond, Va., in June, 1832).

JAMES M. MARSHALL (deposition taken in June, 1832, in Frederick County, Va.) testified that Humphrey Marshall continued with the regiment until the three years term of the men had expired, and it was disbanded; and Humphrey was then a Captain-Lieutenant. (James M. Marshall was a Lieutenant in the State troops, and served to the end of the war).

December 19, 1782, was allowed a warrant for four thousand acres of land to Humphrey Marshall, as a Captain, by the State of Virginia.

His death, as officially reported to the Pension Office, was July 3, 1841.

COMMONWEALTH OF VIRGINIA, LAND OFFICE,
Richmond, Sept. 17, 1888.

SIR: I find the following in the records of this office; to-wit:

Richmond, Dec. 14, 1782.

I certify that Humphrey Marshall was a cadet in the State Artillery in 1777; was made an officer in the same regiment in 1778, a Captain-Lieutenant on December 18th, 1779; and that he is now a supernumerary.

GEORGE MUTER, Col. S. G. R.

BENJAMIN HARRISON.

Warrant for 4000 acres issued to Humphrey Marshall December 19th, 1782. Respectfully, W. R. GAINES, Register Va. Land Office.

A letter from the Secretary of State, at Washington, in whose Department the military records of the Revolutionary War are preserved, states that the name of Humphrey Marshall does not appear upon the *indices* of those records, though the records themselves, if carefully searched, might reveal some interesting matter in reference to his services in that war.

As Humphrey Marshall performed all the public duties which fell to his lot conscientiously, and without fear or favor, it may be reasonably assumed, in the absence of actual information, that he acquitted himself with equal credit in the army. His courage, at any rate, is known to have been of the very first-class; and courage, is undoubtedly the chief and indispensable quality of a good soldier.

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Removal to Kentucky.

Collins' History of Kentucky says that "Humphrey Marshall emigrated to Kentucky in 1780." This is evidently a mistake, since he must have been with his regiment in Virginia at that time; and, as we have

seen, his term of service as a soldier did not expire until February, 1781. Marshall's History of Kentucky states that in the year 1780 "Col. Thomas Marshall, who had distinguished himself by his bravery and good conduct at the battle of Brandywine, and then commander of the regiment of State Artillery" came to Kentucky on a special permit from the Governor of Virginia; and that "his immediate object was to locate land warrants as a provision for a numerous family which he intended to remove to the country on the restoration of peace."

Humphrey Marshall, indeed, in the 1812 edition of his history states that it was in the fall of 1781 that he first visited Kentucky, and then but temporarily.* John Marshall, the father of Humphrey, came to Kentucky in 1779, with his younger brother, Markham Marshall, and settled in what is now Bourbon County, and lived there until the time of his death, years afterwards.

In 1781, Col. Thomas Marshall, whose regiment of Artillery had dissolved in February of that year, was appointed Surveyor for Fayette County, Ky., but "he was in the Atlantic part of the State, and did not arrive in Kentucky during the year." He reached Kentucky in September, 1782, with the view of opening an office as public Surveyor for Fayette, but this was postponed, on account of an expedition against the Indians of the North, which occurred at that time; and it was not until late in November of 1782 that the office was actually opened, and he began his operations as Surveyor.

Humphrey Marshall came with Col. Thomas Marshall to Kentucky in 1782, and from that date commenced his permanent residence in "the dark and bloody ground." He began his career here as a deputy in the Surveyor's office; and he had probably picked out the land to be covered by the military land warrant for four thousand acres which he returned

* Pages 148-9.—The autumn of this year (1781) introduced a greater accession of new settlers. * * * It was now for the first time that we saw Kentucky, and had our eyes opened to the prospect of resources never before contemplated. We found the people of the country in their stations cheerful, inquisitive and hospitable. It was delightful to see them so delighted with the brightening prospect of security, arising from their accession of numbers. A determination to return to the old settlement (as the phrase then was for going into the Atlantic part of the State) and prepare for a permanent residence in Kentucky, limited our stay, as it circumscribed our excursions; nor were we at any time beyond the limits of Lincoln county.

to Virginia to secure, in December, 1782, on account of his services in the Revolutionary war.

In the year 1788, Humphrey Marshall had a rencontre in Lexington with a Mr. Jordan Harris, which shall be described in due course. The fact is mentioned in this connection because Mr. Harris, who brought on the trouble and got decidedly the worst of it, in order to "get even," published an alleged "History of Humphrey Marshall" in a series of communications to the Kentucke Gazette. Under the circumstances, Mr. Harris's statements must be taken with a grain of salt; but what he states in regard to such facts in Humphrey Marshall's career as the holding of office, seeking office, &c., can be allowed full credibility; and he states several such facts, which would otherwise have been lost. Mr. Harris says (Kentucke Gazette, April 5, 1788): "The first knowledge we had of Capt. Marshall in this country was in 1782-'83, when the bounty of an indulgent uncle raised him from a state of extreme indigence and obscurity, made him a deputy surveyor, and placed him as an assistant in the Surveyor's office of the county. * * * * * The Surveyor's office was then kept in the fort, in this place" (Lexington).

It is, perhaps, true that when Humphrey Marshall first came to Kentucky, he was in a measure, indigent and obscure, and without capital, except such as was comprised by his intellect and courage. His father, being a younger son, had inherited but little, owing to the old English system of primogeniture which prevailed in the laws of Virginia until after the Revolution; and he continued through life in moderate circumstances. The Revolution broke out before the son had reached manhood, and the times in Virginia were not propitious for money-making by honest men. While still young, perhaps barely twenty-two, Humphrey Marshall came to Kentucky, and brought some money with him—more, probably, than the generalty of the settlers at that time brought, but still the sum could not have been large. And his military land warrant for four thousand acres was certainly valuable.

His career was a successful one, financially, from the day of his arrival in the State, and he grew to be immensely wealthy. The bulk of his large fortune he amassed at his practice of the law, and by investments and speculations in lands, military claims, &c.

He settled first in Lexington, and was one of the earliest purchasers of lots in that town in 1783.* He afterwards lived at various times in Bourbon, Woodford and Franklin counties, and entered or bought large tracts in these and many other counties, and doubtless at one time was one of the largest single landowners in Kentucky. A young gentleman who went to the Land Office at Frankfort recently to get a memorandum of the dates of Humphrey Marshall's land entries, and the number of acres in each, for use in this work, wrote to the author: "It would involve a week's hard work to take down what you want." There are hundreds of such entries on the books of Register of the Land Office at Frankfort, ranging in amount from four hundred to forty thousand acres each. The Register of the Land Office in Richmond, Virginia, writes that there are a great many entries of public lands in Kentucky ranging from four hundred to four thousand acres each, in the name of Humphrey Marshall, on the books of that office.

Humphrey Marshall seemed to have had a Midas touch, and a harvest of gold ripened wherever he laid his hands. There is a tradition in Frankfort that it was once his boast that he could ride from that town to Versailles, a distance of about twenty miles, entirely upon his own land; and that he counted his silver money by the peck, not having time to go through the tedious process of counting it coin by coin!

All this is, perhaps, a digression, but it is matter which may as well be related in this connection as in any other.



His Marriage.

In 1784 Humphrey Marshall returned to Virginia, and was married to his cousin "Mary" Marshall, as she was called, at Col. Thomas Marshall's estate of "Oak Hill," in Fauquier County, on September 18th, of that year. While Col. Thomas Marshall had settled permanently in Kentucky in 1782, his family remained at Oak Hill until 1785, when he removed them, also, to Lexington. Humphrey Marshall's wife was

* Ranck's History of Lexington.

called "Mary;" numerous deeds of record in the Fayette County Court are signed by her as "Anna Maria," (which is also inscribed upon her tomb); and she is named in her father's will as "Mary Anne." She was born September 19th, 1759, and was Col. Thomas Marshall's second daughter. It is recorded of her that she was beautiful alike in features, mind and character, and crowned with all the womanly virtues. She returned with her husband to Kentucky, and even his bitter enemies (of whom he had more than one man's share) gave him credit for his love and devotion to her throughout life.



Personal Characteristics.

Being now fully arrived at manhood, married, and settled down to the serious business of life, it may be as well to give here, as elsewhere, that account of Humphrey Marshall's personal characteristics which have descended to his friends by tradition, or otherwise.

He is described as having been a man of splendid physical mould, as well as of great mental superiority. He stood six feet two inches high, and was of a slender though lithe and muscular build. His handsome face was set off by a luxuriant growth of black hair, and by a pair of piercing, coal-black-eyes. One writer [Col. S. I. M. Major] in a brief sketch of him, states that he gave offense to the mob, or common herd, by "eccentricities of dress and manner." A gentleman still living, who knew Humphrey Marshall intimately during twenty or more of the last years of his life, says that "his dress was always very plain, being generally of *homespun*, but the best and finest that could be made, and cut by a tailor so as to fit him well and show off his fine form to advantage. His linen was always of the finest and whitest, and scrupulously clean. In manners he was very graceful—the most graceful man I ever saw. He was stately, but punctiliously courteous. It may be that he carried his graciousness to an extent that some regarded as condescension or patronage. He was fond of children, and was kind, amiable and attractive to them. At the same time he was not at all conciliatory to his enemies. The leaders he met with haughty defiance; their *catspaws* he did not notice. The latter would abuse him, and he would treat them as if

entirely ignorant of their assaults upon him, and this contemptuous indifference made him more hated by such men than if he had shot at them."

Humphrey Marshall was the very perfection of physical and moral courage, and never knew fear. It was said of him by one of his enemies, that "he feared neither God, man, nor the devil." Impelled by an innate honesty and candor, he never failed to give utterance to his convictions, no matter how unpopular they might be. It was morally impossible for him to be untrue to his convictions, and to this cause may be traced much of the unpopularity which his enemies worked up against him among the ignorant or unthinking masses, for whom he always had the most supreme contempt. Says Amos Kendall, writing of him in the *Frankfort Argus* in 1824: "The old man has *one virtue * * * this is candor*. He is an *ultra* Federalist himself and often expressed—what he always felt—an utter contempt for the great mass of the people, whom he, in ~~derision~~, denominated the '*nether end of society*!'"

When pursued by his enemies, Mr. Marshall boldly faced them with a blistering tongue and a biting pen. He was an avowed Federalist at a time when Federalism was as unpopular in Kentucky as Toryism had been in Virginia during the Revolutionary War. As to the Tories themselves who remained in the States after the close of that war, he gave offense to the public because he advocated the policy of treating them with common humanity, and of affording them the protection of the laws of the country. He stood in the way of some men with his outspoken, unselfish views, and they were not slow to use against him, with the ignorant, the many means which he, in his irrepressible candor, continually offered them. The *New York Herald* of June 1st, 1803 (Wm. T. Coleman, editor,) says: "In Kentucky, *Federalism* is of all political sins deemed the most mortal, and the charge of it once proved on the most popular man in the State would as effectually terminate his political respectability as a conviction of sheep stealing would ruin his moral character." At the time they were written, these words were true. But as if his Federalism, boldly avowed, was not club enough in the hands of his enemies, "Old Humphrey," (as he was nearly always called) must needs be skeptical in his religious views, and let *that* be known also.

This, in the midst of an intensely religious community, doubtless added the cap-sheaf to his offensiveness. He was not only an avowed disbeliever in all forms of revealed religion, but an active and aggressive enemy to them. He wrote infidel tracts or pamphlets and printed them at his own expense, and the doctrines of these perhaps rankled like poison in the breasts of a people then sincere, serene and undisturbed in their faith; and doubtless in many instances made for him enemies of people who might otherwise have been his warm friends. At any rate, we may well believe that his prominent enemies, many of whom were doubtless as unbelieving as he, but who obscured their real convictions under an assumed odor of sanctity, did not leave undeveloped so fruitful a source of unpopularity. These infidel pamphlets have perished from the face of the earth. It is believed that they were collected and destroyed by Mr. Marshall's relatives many years ago.

While Humphrey Marshall's sincerity, honesty of purpose and integrity of character are now freely admitted and greatly admired by every disinterested student of Kentucky history, yet it must be admitted that in the midst of his career he was sincerely execrated by his numerous enemies, who gave him credit for no good quality, accused him freely of nearly every crime in the calendar, and referred to him generally as "the sum of all villainies;" and there are not lacking, even in this day, some who would adorn his character with the blackest and the vilest coat of paint that could be made to stick.

But after all, the people knew almost instinctively that Humphrey Marshall "would do to tie to," to use the homely phraseology of his times; and so we shall see in the course of this sketch that he was rarely defeated when he offered for office, notwithstanding the ceaseless machinations of his powerful enemies, and notwithstanding the hopeless minority and general offensiveness of the Federal party in Kentucky in his day and generation. It was in times of crises that he was invincible; when the measures of the opposition party ended in signal failure, and the schemes of its leaders, (generally his enemies) went down in defeat or, as was sometimes the case, in the odium of exposure, it was then that the *people* turned to Humphrey Marshall as to an anchor sure and steadfast.

As a Lawyer.

As Mr. Marshall went into the Revolutionary army when only eighteen years of age, his legal studies must have been desultory. It is not known with whom he studied law, but it must have been while he was a deputy in the Surveyor's office in Lexington, for he is known to have been a practitioner as early as 1785. He practiced law, more or less, to the end of his life, though he generally conducted extensive farming operations also. He was an able and successful lawyer. His remarkable vigor of intellect, at once acute and comprehensive, and his great powers of concentration made him one of the very ablest, if not most learned, lawyers of the State. He was an exceedingly able constitutional lawyer, an aggressive and very bold advocate, a strong debater, and his success was ever commensurate with his talents and ability.

It was as a lawyer, in 1785, that he discovered a flaw in the McAfee survey of the land whereon Frankfort now stands* (the survey having never been recorded at Williamsburg) and he at once located a claim covering almost the entire site of North Frankfort. There were then no settlers on the McAfee survey, and McAfee himself did not then or afterwards make any assertion of his claim, having located and entered other surveys in what he doubtless considered more desirable localities. Mr. Marshall afterwards made Frankfort his home, and he was the friend of the town to the end of his days. He even stops long enough in his History of Kentucky to defend Frankfort from the sarcastic onslaught which Henry Clay made upon it in a famous speech in the Legislature, in 1806, when an almost successful effort to have the seat of government removed to Lexington was made.

* Perrin's History of Kentucky, page 200.—"The land on which Frankfort stands was surveyed as early as 1774 by the McAfees, but these adventurers, finding richer lands elsewhere, neglected to record the plat made. The survey was well known, however, and subsequent locaters were careful not to infringe upon its boundaries. Thus the adjacent lands were entered at various times, up to 1780; the omission of the McAfees escaping notice until 1785, when Humphrey Marshall learned of it, and promptly took advantage of the fact to enter it for himself. The following year Frankfort was established as a town."

Mr. Marshall also owned the present site of Covington, at one time.

Beginning of His Public Career.

When Humphrey Marshall settled in Kentucky his rare and commanding talents and great force of character, together with his insatiable desire for official position, soon put him into public notice and gave him a front rank among the leaders of the day. First and last, he was often honored with office. First, he was deputy surveyor of Fayette County, in 1782; then Deputy Lieutenant of Bourbon County at its formation in 1785; in 1787, and again in 1789, he was a member of the Convention at Danville preliminary to the formation of a State Constitution; in 1787 a delegate from Kentucky to the Virginia State Convention which ratified the Federal Constitution; in 1790 Surveyor of Woodford County; in 1793 and 1794 a member of the Lower House of the Kentucky Legislature from the same county. In 1795 he was elected United States Senator from Kentucky, serving until 1801; and his advocacy, in this body, of the Jay Treaty, which was very unpopular in Kentucky, and his vote to ratify it, gave his enemies a pretext to undermine him with his people which they knew well enough how to use, and did use. They then delivered to his popularity a blow from which it never fully recovered. "But," says Col. Major's sketch, "when driven from larger fields, he centered his aspirations upon offices within the gift of the people of the county in which he resided." In 1807, 1808, 1809 and 1823 he represented Franklin County in the State Legislature; and he was defeated for the same position in 1810, and again in 1813. In 1812 and 1813 he was Chairman of the Board of Trustees of the Town of Frankfort. This enumeration, it is believed, comprises every official position he ever held, large and small, exclusive of those which he held in the army.

To the ire of Mr. Jordan Harris, whose rencontre with Mr. Marshall in the streets of Lexington in 1788 has been mentioned, we owe the following contribution to the history of Humphrey Marshall which, though highly colored, is racy; and it is doubtless true as to events, however inaccurately Mr. Harris' prejudices may have led him to view those facts:

EXTRACT FROM LETTER OF JORDAN HARRIS.

[*Kentucke Gazette*, April 26th, 1788.]

He [Humphrey Marshall] accordingly offered himself for the General Assembly,* but was rejected by the people. * * * Soon after this we find him offering himself in opposition to the separation from Virginia, and, placing much confidence in his oratorical powers, he ventured to harangue the people upon the occasion. The issue of that attempt is well known to all, and again terminated in Mr. Marshall's disgrace and disappointment. * * * Again, the veneration due to a long course of political experience, the gratitude due to a benefactor who had raised him from the dust, and the strong ties of filial duty were not sufficient to prevent his appearance in opposition to Col. Thomas Marshall. * * * Again defeated, he was not proof against this discomfiture. It shocked his vanity, wounded his pride, appalled his vigor, and was received as the death-blow of all his political hopes in Fayette County. He therefore determined to change his residence, and as a plan was in agitation to divide the county of Bourbon, he conceived he could *nick the time to a hair*, and by seasonable application procure from the Legislature a portion of those honors and that power for which he panted, and which the people stubbornly denied him. For this purpose he made application to Col. Crockett and Capt. Fowler, the delegates of Fayette County, to nominate him for the Lieutenancy of the new county.

It appears that this office had been promised to another, and Mr. Marshall then applied for the Deputy Lieutenancy. "It was then urged," adds Mr. Harris, "that it would be inconsistent to nominate him to any office in a county in which he did not reside; and to obviate this objection he pledged his word of honor that he would be a resident therein before the Act could possibly pass the Legislature!"

It is impossible that Mr. Harris's statement that Humphrey Marshall ran against Col. Thomas Marshall for any office can be true. It may be true that Fayette County sent several delegates to the Virginia Legislature, and that *both* were candidates and Humphrey was defeated. (Col. Thomas Marshall and John Fowler were elected in 1786). But they were in no sense candidates *against* each other. Col. Marshall, as has been observed, *was* the benefactor of his nephew, but not any more than he should have been; and Humphrey Marshall never did repay him with

* Perhaps in 1782 or 1783.

ingratitude, but admired him above all other men, loved him more, perhaps, than he did his own father, and stood by him at all times, and under all circumstances. His History shows how he venerated his uncle. The uncle and nephew were always friendly. Col. Marshall in his will, made in 1798 and probated in 1803, named his sons Thomas and Alexander K., and his nephew and son-in-law, Humphrey Marshall, his executors, which he certainly never would have done had Humphrey acted toward him as Mr. Harris represented. To his daughter "Mary Anne," Humphrey's wife, he specifically bequeathed, in addition to what he had already given her "500 acres adjoining Crittenden's pre-emption;" also 400 acres on the Ohio, at the mouth of Hardin's Creek, and large tracts of military lands.

Another position of importance, not official in any sense, however, which Humphrey Marshall occupied about this time, was that of a member of "*The Kentucke Society for Promoting Useful Knowledge*;"* with headquarters at Danville. This Society was designed to diffuse useful information to farmers, mechanics, and, indeed, to every class of citizens of the new country, in contradistinction to the politicians. It appears

* The following advertisement appeared in the *Kentucke Gazette* of December 1, 1787:

WHEREAS, the subscribers to the proposals for establishing a society to be called *The Kentucke Society for promoting useful Knowledge*, were prevented from meeting on the fourth Monday in September last, according to appointment, and as it is probable that a meeting of the subscribers can not in any short time be had, and absolutely necessary that something should be done for the benefit of the Society without further loss of time, it is proposed by sundry subscribers that a Select Committee, Curator, and Treasurer shall be forthwith chosen by the subscribers in the (only) manner which their dispersed situation will, at present, admit of. The Committee, Curator and Treasurer to act in their several capacities till a meeting of the subscribers can be had.

Each subscriber is therefore requested to forward to Mr. Thomas Speed, at Danville, before the first day of February next a list of such gentlemen as he chuses to constitute a Select Committee; and also the names of such gentlemen as he wishes to be appointed Curator and Treasurer.

It is proposed that such gentlemen as are found, on the said first day of Feb. next, to have a majority of such votes in their favour as have *then* come to hand, shall be a Select Committee, and act as Curator and Treasurer, till a meeting, as above mentioned, can be had.

A list of all the subscribers is hereunto subjoined, and it is necessary to observe that the Select Committee shall consist of seven members, including the chairman, who is to be chosen by the committee.

Geo. Muter.	Step. Ormsby.	Will Irvine.	Robt. Barr.
Sam. McDowell.	J. Overton, Junr.	Chas. Scott.	Hor. Turpin.
Harry Innes.	J. Brown.	Levi Todd.	Robt. Johnson.
Jas. Speed.	John Jouett.	James Parker.	John Craig.
Will McDowell.	Tho. Allin.	Alex. Parker.	Jas. Garrard.
Willis Green.	Rob't Todd.	John Fowler.	Isaac Shelby.
Thos. Todd.	Jos. Crockett.	John Coburn.	David Leitch.
Thos. Speed.	Ebenr. Brooks.	Geo. Gordon.	H. Marshall.
Gabriel J. Johnson.	T. Hall.	Alex. D. Orr.	Christo. Greenup.
Joshua Barbee.	Caleb Wallace.		

that he was not a member of the famous "Political Club," also seated at Danville, which was formed in 1786, for the discussion of political subjects, and which lasted until 1790. Indeed, Col. John Mason Brown, in his admirable "Centennial Address" at Frankfort, in 1886, says: "As far back as 1786, the 'Political Club' at Danville, had black-balled Mr. Marshall.* The affront was never forgotten or forgiven, and each member of it from that time lived under his gloomy suspicion of all that was disloyal and dishonorable."

Many leading men of the times belonged to both of these societies, and Humphrey Marshall, black-balled by the "Political Club" in 1786, had no difficulty, it appears, in gaining admittance the following year to the "Kentucke Society," although it numbered among its members many of those men who were subsequently affected by his alleged "gloomy suspicions." To the disinterested student of Kentucky history it will appear probable that his suspicions against some of these men rested upon more substantial grounds.



The Virginia Convention.

The year 1788 was replete with memorable events in the history of Kentucky, and in these Humphrey Marshall was a distinguished actor. In this year the State of Virginia held her convention for taking into consideration the adoption of the present Federal Constitution. Each county in the "District of Kentucky" was entitled to send two delegates, and Humphrey Marshall was one of the delegates from the county of Fayette. The adoption of the constitution was an extremely unpopular measure in Kentucky, except, perhaps, in Jefferson County. The election of Mr. Marshall from Fayette County, which was the hot-bed of the opposition, appears strange, as he was a Federalist from the very first of his political career. All the Marshall family were Federalists, and he was the most extreme Federalist among them. His eldest son, born in 1785, he named John Jay, and this fact is significant. And there is reason

* The Political Club black-balled Mr. Marshall by a vote of 8 to 5. Other prominent men of the day black-balled by this Club were Willis Green, John Reed, jr., and Maurice Nagle.

to believe that he made his canvass for election to the convention upon the platform of the ratification of the constitution—with *certain amendments*; but of this fact there can now be no certain proof adduced. He was impressed as a soldier, and again as a pioneer to Kentucky, with the inefficiency of the old Confederation. As a soldier, before he had reached manhood, he saw the necessity of a government with the power to enforce its own laws. As a pioneer, he was constantly a witness of the inefficiency of the Confederation to protect the people from their savage foes, and the inadequacy of the States for that purpose. He wanted a government clothed with all the necessary powers for national purposes, and with the authority to give effect to those powers, and not to hold and exercise them at the discretion of the States, and subject to continual vetoes and defeat by the latter. Therefore, it almost necessarily follows that he went to the Virginia Convention strongly in favor of the ratification of the constitution, unpopular as the measure was in Kentucky.* The adverse feeling there had been worked up by the leading men of Kentucky, most of whom were opposed to the "scheme of a more perfect union" upon grounds that appeared reasonable, and were then tenable. It would be going too far to say that more than a few of them were opposed to it upon private and personal grounds, and for illegal purposes. The biographer of John Jay says that most of the opponents of the constitution, not only in Kentucky, but throughout the Union, were "*men who wanted to be little kings at home!*"

Mr. Marshall was of considerable weight in the Virginia Convention. Not that he was prominent as a debater on the floor, for that he was not. Many public men were never prominent or conspicuous in that way in deliberative bodies, and among these may be named Washington and Jefferson; but it would certainly be erroneous to conclude that on this account they were without very great weight in controlling the action of such bodies.

Mr. Marshall voted for the ratification of the constitution, as did two others out of the fourteen delegates from the District of Kentucky; to-

* Butler, p. 167.—"Mr. Humphrey Marshall says the first copy of the *Federalist* he saw was in the hands of George Nicholas, when the former was on his journey to meet with the above memorable convention."

wit: Robert Breckinridge and Rice Bullock, of Jefferson County. These gentlemen, although representing a constituency at that time Federalistic, were brought under a strong pressure from Kentucky to throw their weight against the constitution; and it is stated that but for the influence of Humphrey Marshall they might have done so. He, defiant upon all occasions, was particularly so upon this one; and his influence with Breckinridge and Bullock induced them to stand with him for the constitution. The weight of these three Kentuckians,* from a country supposed to be unanimously hostile, helped greatly to turn the tide which had at first set in strongly in opposition to the adoption of the Federal Constitution. The adoption of the constitution in the Virginia convention was carried by a majority of only ten votes; and a distinguished Kentuckian, now living, who has made a study of the history of that convention, gives it as his opinion that the adoption of the constitution by Virginia was brought about by the action of Humphrey Marshall more than by that of any other one man; and that except for him the measure would have been defeated in the "Old Dominion."

One object of this work being to allow the subject to tell his own story, so far as may be feasible, the account of this convention given by Mr. Marshall in his history of Kentucky is here inserted; as follows:

In the meantime, also another subject of great interest had been thrown upon the public mind, and mingled itself with the other topics of conversation. It was the Federal Constitution, formed in 1787, and now offered to

* Butler, p. 166.—"The two members from the county of Jefferson, the venerable Robert Breckinridge, lately deceased, and Rice Bullock; and Humphrey Marshall, from Fayette, now silvered with years and public services, had the honor to enroll their names in favor of the constitution, and thereby the ever enduring renown of having contributed to preserve the fruits of the Revolution; and to allow it the opportunity of ripening into the present glorious harvest of liberty, happiness, plenty and peace." [1834.]

Perrin, p. 277.—"Of the Kentucky members, Rice Bullock, Robert Breckinridge and Humphrey Marshall voted with the majority, the latter alone disappointing his constituents. When the result of the convention was known in Kentucky there was a deep feeling of resentment and disappointment experienced, especially in regard to the conduct of Mr. Marshall. He undoubtedly acted upon the proper view of the relation of representative and constituency; and provided he made no expressed or implied engagement to act otherwise (of which there is no evidence) the member from Fayette can not reasonably be charged with a violation of good faith. But the people did not view the matter in so calm a manner, and the independent delegate narrowly escaped the violent expression of his constituency's displeasure."

Collins, p. 268, Vol. 1.—"Nearly every leading man in Kentucky, and an immense majority of the people were warmly anti-federal; yet three of the Kentucky delegation, one from Fayette and two from Jefferson, voted in favor of its adoption. The member from Fayette was no other than the veteran historian of Kentucky, Humphrey Marshall, who certainly voted against the opinion of a majority of his constituents."

the adoption of the American people. It is confidently believed that the advocates for immediate, in other words, *violent separation*, of which there were more than a few, were universally opposed to the adoption of this Constitution. Many there were who became opposed to it who were in favor of a regular separation, in consequence of objections which they heard; and others, from the same cause, who were opposed to a separation on any terms. Of the last it may be remarked that they had not much to say; while the tone of public opinion was certainly given by the first.

The most common and ostensible objection was that it would endanger State rights and personal liberty—that it was too strong. While, nevertheless, the existing Confederation, weak and inefficient, was not only a cause of complaint but a subject of ridicule to some of those very men. It was, they said, a rope of sand, a sovereign without subjects, a body whose head could not move its limbs; a thing to be pitied, not feared or respected. This was but too true; and yet, that those who set out its defects should be opposed to the constitution which promised a remedy for them involves no contradiction, will be apparent upon the introduction of a third idea, which is to be developed and elucidated in the course of this history; and that is a *connection between the Spanish provinces and Kentucky, under the protection of his Catholic Majesty, at that time contemplated, and known to be incompatible with Federal relations*. The scheme of this treachery was yet, however, managed with much caution, as the public mind was thought not to be prepared for it; that it must await events already in embryo, and, as it was hoped, fast approaching maturity.

The rejection of the proposed revival of the government of the United States was, without doubt, anticipated as an event of the most flattering promise and importance, by the Spaniardized republicans.

There were, indeed, in Kentucky, many respectable and well-informed citizens who could not give their entire approbation to the Constitution then offered to them, but who, nevertheless, were not willing to lose it, and whose wish it evidently was that it should be adopted with some amendments. But whether amendments were to be *prior* or *subsequent* to the ratification, produced a question not free from difficulty.

A crisis more important to Kentucky had never occurred. The Legislature had authorized each county in the Commonwealth to elect two members at the general election in April, to meet on the ensuing June at the seat of government for the purpose of accepting or rejecting the new federal constitution. At the same election were also to be chosen five members, it will be recollected, in each county, to form a convention at Danville, whose business it was to form a constitution for the proposed State of Kentucky.

These elections now approached, and it seemed to be with the great mass of the people, (who, it is to be confessed, seldom see speculative objects in

politics with very clear discrimination) settled into an opinion that the ratification of the Federal Constitution was to be rejected for want of *previous* amendments—with the exception of Jefferson county, where public opinion at that time was governed by strong federal views and wishes.

3rd person
The requisite number of members were everywhere elected, and without a failure, it is believed, took their seats in the convention, attended a session of three weeks, and voted on the question of ratification—eleven against, and three for it, Humphrey Marshall from Fayette, and the two members from Jefferson—under a conviction that *previous* amendments, amidst the divided, agitated and conflicting opinions and views of the popular leaders throughout the continent, were impracticable—that the attempt would hazard the existence of the Union—whereas, by the adoption of the constitution, all would be secured. Time and experience have proved the correctness of that course. The vote for ratification took place on the 20th of June—eighty-eight to seventy-eight—Virginia being the tenth adopting State. And thus were defeated *many factions*, no less hostile to the Union than that embodied as "The Hartford Convention." In Kentucky it was deeply felt and strongly censured by those who were themselves personally implicated, and who had yet influence enough to sway popular opinion. A strenuous effort was made to direct this against the Fayette member, who had voted for the constitution, and not without effect. He had, it is true, been abundantly forewarned of the loss of popularity while in the convention, and admonished that it was Mr. Brown's decided opinion, rendered in a letter to a member, that the constitution ought to be **REJECTED**. This, however, was not his first sin against the light and knowledge of such men. He had participated in the active scenes of the Revolution; heard the want of power in Congress often deplored, and witnessed its defects as to Indian affairs and the Union generally, to which he was strongly attached. He had also been an observer of Gen. Wilkinson's conduct, which was not to be accounted for upon legitimate motives; and he deemed the new constitution an important improvement of the Federal system, after hearing it ably discussed. His own convictions he could not violate; these taught him that he was subserving the *real interests* of his constituents, and according to these he acted, putting to hazard and at naught his own popularity; thinking, withal, for his experience was then in its bud, that the people possessed intelligence and justice enough to perceive and applaud the propriety of the course pursued.

Strange as it may appear at this distance of time, and in the light of subsequent history, Humphrey Marshall's course and vote in this convention were made the pretext for representing him to the people at home as a man who had betrayed his trust, gone against the interests of his people, and was therefore unworthy of further confidence or respect.

It was continually recurred to, also, for years afterwards, as a matter of reproach to him. In 1806, nearly twenty years after, during the agitation and commotion which attended the exposure of the so-called "*Spanish Associates*" by the *Western World* newspaper at Frankfort, Mr. Thomas Bodley, in defense of several of the implicated parties, brought on a newspaper controversy with Humphrey Marshall, in which, while acknowledging the benefits of the Union and commending the wisdom and statesmanship which had brought it about, he made it a matter of complaint against Mr. Marshall that he had voted in the Virginia convention for the adoption of the constitution! To this Mr. Marshall made the following reply: *

If there ever was a man (and the fact cannot be denied) who voted on any public question from pure motives, from a high sense of public trust, from the full conviction of his best judgment, and from a perfect conception of his standing and responsibility, I am bold to say that, on that question, I was that man. Nearly twenty years have elapsed since that vote was given; it has been the subject of much invective with my enemies, it has been an object of much reflection with myself. This is the first time I have noticed it publicly, and will probably be the last; and I now solemnly declare (and my adversaries are welcome to the full extent of it) that if the same thing were to do again, under the same circumstances, I am the man who would do it; and, greatly daring, (in the opinion of my adversaries) TO SAVE MY COUNTRY I WOULD SACRIFICE MY POPULARITY! But upon that occasion I was not punished by the people to the full extent of my deserts, for on my return home the next year† they elected me to the convention which was to determine, and did determine, on the legal separation which afterwards took place. But what the people did not chuse to do, the *Spanish Associates*, their *minions* and *tools* have executed with ample measure. Now whom did I offend by that vote, the *people*, or the *Spanish Associates*? * * * * [Here Mr Marshall states explicitly and voluminously that he made no *pledge* to the people to vote against the ratification of the constitution, and that he had no *instructions* from them so to vote.—AUTHOR.] * * * * Thus stood the case, and I had no means of consulting my constituents, nor did I deem it necessary. I stood in their place, and it was necessary only to understand the public interest, and to pursue it according to my best judgment. And notwithstanding I found that a great majority of the Kentucky members were against the adoption, and although

* Kentucky Gazette, October 13, 1806.

† 1789.

I was *kindly admonished* that I should lose my popularity; yet committing all to my conscience and my country I voted (and I glory in it!) the United States from anarchy to order, from despair to hope, from poverty to affluence, from impotence to power, to public security, and to private happiness—for such has been the effect of adopting the constitution. * * * *

But this vote of adoption was to the *Spanish Associates* "the unkindest cut of all." It must have appeared to them, and will now appear probable, in a retrospective view, that in the debilitated and weak state of the old confederation, which hardly kept the States together at that time, that but for the change of government they might have carried their scheme into effect. On the subject of not receiving Kentucky into the Union and on the subject of the navigation of the Mississippi, there is much reason to apprehend that the people of Kentucky might have been irritated into a declaration of *independence*, and into a connection with Spain.

The adoption of the new and energetic government, which held out to the people the promise of those blessings which it has since realized, was therefore to be deprecated by those who were *intriguing* for a dismemberment of the Union.

This new government not only held out to the people a new and interesting object of attachment, but it held up to the *Associates* an image of power which appalled them. It was necessary to make, before the new government was put into motion, their utmost efforts for a declaration of *independence*; and, accordingly, it was made, and failed, in 1788. * * * *

For this vote of adoption the *Spanish junto* raised the cry against me, and they have found yelpers to repeat it, *upon all suitable occasions*, from that time down to the days of Thomas Bodley. * * * *



- The Affair with Jordan Harris.

With the opening of the year 1788, an attack was begun upon Humphrey Marshall all along the line, upon the occasion of his candidacy for delegate to the Virginia constitutional convention. His vote a short time afterwards in that convention for the ratification of the Federal constitution gained for him the hatred of certain men who, as Mr. Marshall himself charges, had in view other arrangements for the disposition of Kentucky, and whose plans were thwarted, or, at least retarded, by the adoption by Virginia of the "scheme of a more perfect union." He had been threatened with the loss of his popularity in Kentucky if he persisted in voting for the adoption of the constitution, but he voted

for it, nevertheless; and soon measures to carry the threat into execution were adopted.

His defeat as a delegate to the convention was ardently desired by his enemies, as they well knew what his course would be should he be elected. Rumors and charges affecting his character were circulated freely. In the *Kentucke Gazette* of February 23, 1788, Mr. Marshall printed a card protesting against the violent assaults upon his character, from which the following extract is taken:

When a combination of *men* persevere in a violent opposition to *one man*, there is reason to believe that one side or the other is extremely to blame, and hence the necessity of a candid inquiry. If the party oppose this individual merely in the political line, and do not descend to attack his private character, this, it must be supposed, can proceed from nothing but a diversity in political sentiment. * * * * But my enemies do not pretend to lay hold on my political sentiments, though frequently and fully expressed; yet it is my progress in the political line which they would wish to obstruct. And in order to effect this they attack my private character, and endeavor to bring me into contempt among my fellow-citizens. * * * *

Now, it is a fundamental principle with me neither to insult nor injure any man without cause. And as I am totally ignorant of having done anything to deserve that train of vulgar epithets, too gross to repeat, which have been thrown upon me by licentious tongues, I request those people, I demand it of them, I defy them, to exhibit a charge of the facts against me which will justify their conduct. Let them commit the facts to writing * * * * and let them make their mark or sign their name. And to this I will appear.

It seems from this that the attacks upon him were not from any known responsible source, at least generally. But that the author of *one* of them was sufficiently known will appear from the following language used by Mr. Marshall in another card in the same issue of the *Gazette*: "I have been told that a certain Jordan Harris asserted in a public and very positive manner that I had acknowledged myself a liar and scoundrel in a letter to Major Crittenden. This letter was merely private, but since the motive which procured it and the matter it contains have both been mistaken and misrepresented, I demand the publication of the genuine letter from under my own hand. The public will then see who is the liar and scoundrel."

The letter to Major Crittenden was subsequently published. It

appears that Major Crittenden had asked for some information about a certain tract of land which he had bought, or contemplated buying, and that Mr. Marshall, of whom the information was asked, gave him the information, which was perfectly correct as far as it went, but for reasons of his own he did not state *all* that he knew about the land. Afterwards when taxed by Major Crittenden with concealing a part of his information on the subject, he replied in a very friendly letter, giving his reasons for his action, stating that he was under no obligation to give any part of the desired information, and adding these words, upon which Jordan Harris's charge against him was founded; to-wit: "You know, Major, that it is not always necessary to tell the whole truth under all circumstances."

But Mr. Harris was insulted by Mr. Marshall's card calling for the publication of the letter to Major Crittenden, and he resolved "to give him a caning," and did actually assault him with two pistols, both of which he fired at Mr. Marshall, who then "boarded him" with a stick, belaboring him so lustily that he precipitately left the field. This affair occasioned something of a sensation at the time; and as each of the parties soon afterwards published his own account of it in the *Gazette*, both accounts will be given here.

JORDAN HARRIS'S ACCOUNT. *

Mr. Bradford * * * * Mr. Marshall having, in your paper of the 23d inst., offered me an insult, I determined to punish him for the same the first time I saw him. This happened in Lexington on the 27th of February, when Mr. Marshall passed through the town. I followed him on horseback with a brace of pistols; and, having strong reasons to believe him a coward, intended just to have caned him; but when I came near him I thought it would be but generous to give him an equal chance, and with this intent I took the pistols in my right hand and offered him his choice. Mr. Marshall refused the pistol, and at the same time aimed a blow at the small of my arm, which was extended toward him, with a cudgel which he carries. He struck me, but not with such force as to destroy the use of my hand, at which, being enraged at the unmanly advantage which he meant, I turned the pistol and, as he dodged about, fired it at him; but, from the motion of my horse and Mr. Marshall's dodging, I missed both fires. I then rode to town for a supply of ammunition,

* Ke. Gazette, March 8, 1788.

when the interference of my friends stopped the affair. If I acted improperly in this affair I must plead my passion in excuse to the public; but I hope I was justifiable, for if Mr. Marshall had broke my arm, which I am certain was his intention, I have no doubt but he would have taken my life!

HUMPHREY MARSHALL'S ACCOUNT. *

* * * * He thus sets out most courageously, *on horseback, with a brace of pistols*, avowedly to kill me (as witness the gentlemen present) tho' he says, *having strong reasons to believe me a coward, only to have caned me*. This was very kind in Mr. Harris, indeed, but why the pistols? * * * * When he came up to me at the end of the lane in Lexington, accosting me in the words of friendship, tho' with a jesture and tone of voice which gave them the directest contradiction, he instantly after asked me if I would take a pistol. With a look of the utmost contempt I asked what he meant, and if I had injured him. He swore most violently that he would let me know, and that if I did not take a pistol he would put me to immediate death. I then told him that I would not take a pistol. He, with the same violence as before, repeated his oath that he would put me to instant death. He talked nothing of his cane, but presented his pistol. Till that moment I did not think Mr. Harris so much of an assassin as to fire. It was then, however, time to defend myself, and I immediately levelled a blow at the pistol and deranged it. I could, with the same ease have given it to him over the head the instant before. Gentlemen who saw me raise the stick and saw the fire of the pistol, can tell whether there was time for the many manœuvres which Mr. Harris describes. The poor soul seems to think that I aimed the blow at the small of his arm; what could have possessed him of that idea is more than I can devise, for I believe even his most partial friends never suspected him of much sagacity. And I should suppose he could only judge of the intention by the action, which operated on the pistol and the end of his finger. His arm, he acknowledges, was extended towards me; and he is sure that I intended to brake it, and is certain that if I could have broke his arm I would have taken his life. This is really a most distressing conclusion, from premises the most pitiful. It is worthy of being told to his grandmother. The cudgel he talks of is the stick his Uncle Ratha attacked me with, it is needles to say where, or with what consequence. But, to bestow a little more attention upon our hero, as this is the last time I intend to take the least notice of him. He says much of dodging. I never knew till now that *rage*, perhaps *fear* had the same effect upon some men as drunkenness. The drunken man, whose head turns round incessantly, thinks every one he sees drunk and reeling. The dizzy eyes and

* Kc. Gazette, March 15, 1788.

trembling hand of Mr. Harris at once account for the dodging which he so frequently mentions. How, indeed, could I dodge, when I received the first fire on horseback at the distance of six or eight feet? And finding that I could not get my horse up, as he had taken fright, (for I confess that I then intended to have knocked him off his horse, and this upon a principle of self-defense), I dismounted; and advancing, received the second fire at the distance of four feet. But how did our champion behave after discharging his pistols? He saw that they had not taken effect; that was certainly a very proper time to have caned me. But he tells you that he *rode to town to get a supply of ammunition*—some fifty or an hundred weight, I suppose, to attack an unarmed man; and that *the interference of his friends put an end to the affair*. I am well informed that some of his friends assisted him to load his pistol (for he had left *one* on the ground) and that he swore in the former strain that he would put me to death; if not then, afterwards, even if it should be privately; and that Mr. Hogan's offering to meet me and lend me his rifle *put an end to the affair*. I have not yet told that his flight to town was after I had boarded him with his uncle's stick, and after he had made several faint attempts to stand, which was seen by several people in town; * at once giving an example of rashness and timidity; at once showing that a man who is capable of attacking like a villain, is also capable of flying like a poltroon. Mr. Harris, however, would make you believe that he has recovered his wonted courage. He tells you that he *has since put me to a fair trial*; that is, he has sent me a challenge, which I declined without returning him an answer. * * * *

It seems from this that Mr. Marshall had previously had an encounter with Mr. Harris's uncle, from whom he had captured the cudgel which he habitually carried, as a trophy of the victory, perhaps. In one of his subsequent communications to the *Gazette*, Mr. Harris alludes to an encounter which Mr. Marshall had had with a Major Martin. Says he: "The Major made certain *pugnacious* applications to his cranium which divided one of the temporal arteries, and rendered a surgical operation necessary to stop the effusion of blood." There is no further account of this affair, of which we have Mr. Harris's version only.

For several weeks after this Mr. Harris used the columns of the *Gazette* freely with an alleged history of Humphrey Marshall, several

* One of the witnesses of this affair was Gen. Charles Scott, who is said to have put his arms akimbo and laughed heartily at it, saying: "By G—, I haven't seen such a defeat since the battle of Monmouth!" It so happened that Gen. Scott afterwards became the subject of Humphrey Marshall's ridicule, and there is a tradition that so keenly did he feel it, that when he became Governor of Kentucky he let it be understood that anybody who should kill "old Humphrey Marshall" might expect the benefit of full executive clemency.

extracts from which have already been used in this work. It was very offensive throughout, and the language used, and the epithets applied by him to Mr. Marshall were often absolutely vile. Mr. Marshall, however, paid no attention to them, at least in the paper.* It is true they called from him one other communication, but in this he contemptuously brushed Mr. Harris aside as the ignorant catspaw of craftier but more prudent men. These he appealed to to come out from behind the cover of their tool and to say what they had to say about him like men; and to these promised a full and satisfactory answer. Indeed, during a portion of the time that Mr. Harris's numbers were being published, Mr. Marshall was not at home. In the *Gazette* of April 20, 1788, he notifies his clients that during his absence Capt. T. Marshall would attend to their business.

In reference to the epithets bestowed upon Mr. Marshall by Mr. Harris, and subsequently by many others, it is well to say here that in all that remains of Mr. Marshall's numerous newspaper controversies with his enemies, there is a singular freedom from low language, though the terms he used are generally strong and severe, and often bitter.

* The *Kentucke Gazette* established by John Bradford, a native of Pennsylvania, in Lexington, on August 11, 1787 (the date of the first number) was then the only newspaper in Kentucky. Subsequently the Legislature of Virginia (1789) changed the spelling from *Kentucke* to *Kentucky*, and a corresponding change was made in the name of the newspaper.

The Act of the Virginia Legislature upon which the etymology of Kentucky hinged, was passed in November, 1788, and was entitled "An Act concerning the importation of slaves into the District of *Kentucky*." Previous to this time the name had been spelled *Kentucke*. This Act was published in the *Gazette* of February 14, 1789, by authority, and from that date the *Gazette* spelled the name with a terminal *y* instead of *e*; and this fixed the spelling of "Kentucky," perhaps for all time. Thus, we see that the institution of slavery decided, indirectly though it was, the way in which the word *Kentucky* should be spelled.

On January 4, 1797, ten years after its establishment, John Bradford, in giving a short history of the *Gazette*, says: "As the circumstances which first gave birth to this paper are unknown to the greater part of its present patrons, it may not be disagreeable to any of them to take a retrospective view of its origin and progress, as well as the motives which first induced me to undertake the business of a printer.

"In the year 1786, whilst a convention of the citizens of Kentucky, by Delegates, were deliberating on the propriety of separating from the State of Virginia, the want of a proper channel through which to communicate to the people at large political sentiments on a subject so extremely interesting to them, and in which unanimity was so very necessary, induced them to appoint a committee of their own body to encourage a Printer to settle in the District. The critical situation in which the District of Kentucky was at that time placed, being surrounded on every side by a cruel and savage foe, and which almost put an entire stop to emigration, consequently to the influx of a sufficient circulating medium, occasioned the belief that no encouragement *could* be given by the committee that would encourage a Printer to remove to Kentucky. This belief was much strengthened by an unsuccessful attempt which had been made by sundry gentlemen to induce a Mr. Miles Hunter (a Printer) to settle in this country; who refused, unless he could have secured to him certain stipulated emoluments, to continue for a given time, which they could not venture to promise.

"Having duly weighed all the circumstances, and from a confidence in my own

This is the more singular when we find, as we do, that the burden of his adversaries' arguments, as a general thing, was to prove that he was a blackguard, and an abandoned, if not an infamous character. This class of weapon had been effectually used before, as it has been since, in breaking down the influence of a formidable opponent.



The Spanish Intrigue.

In 1784 James Wilkinson, a Pennsylvanian, who had been an officer in the Revolutionary Army, appeared upon the scene in Kentucky, and became a prominent actor in the events which shortly afterwards occurred in the infant community. He located himself at Lexington, and there established the third store, or mercantile house, that Kentucky ever knew. The first had been established 'at Boonesboro' in 1775 by Henderson & Co., which survived only a short time, and the second at Louisville by Daniel Brodhead in 1783. Wilkinson was a man of many engaging qualities, and readily established himself in the esteem of the people. No man, perhaps, ever possessed in a larger degree the arts of

mechanical talents (notwithstanding I had not the least knowledge of the printing art), together with the belief that I could execute the business on a small scale until I should be able to instruct my sons (of which I had five) added to the prospects of future advantages to them and myself, I was prompted to make a tender of my services to the committee. They accepted them, and made report thereof to the convention, who concurred with their committee, and as the highest mark of approbation, gave me their unanimous promise of patronage.

"Satisfied of having obtained every encouragement that I had a right to expect, or that they, as a body, had power to grant, and in which I had the fullest confidence, I employed every possible means in my power to perform the engagements made on my part; and on the 11th day of August, 1787, presented to the world the first number of the KENTUCKY GAZETTE. It is impossible to express the grateful sensations I experienced at the approbation with which it was received by its patrons—notwithstanding its almost innumerable imperfections. What a striking difference between that paper and the one now before you!

"From the great scarcity of money and low state of population at that time, I was enabled to procure about 180 subscribers only; notwithstanding which, and the high prices of every article used in the prosecution of the business, I was determined to persevere, if possible. And although the whole of my income was not sufficient to procure the imported articles necessary to be employed, yet the friendly assistance which I received from the Merchants of Lexington enabled me to continue the paper on that small scale until the 17th of September, 1791. * * * *

"Under the auspices of your patronage, you have seen the progress of the KENTUCKY GAZETTE until it has obtained a rank of Equality with most papers published in the United States; and perhaps superior to almost any in the world whose origin and progress have been marked with equal disadvantages." * * * *

The Gazette continued to be published until 1848, when it ceased to exist. In the Lexington Library there is an almost complete set of its annual files from 1787 to 1848, a period of more than sixty years; and these old papers, now rarely referred to, contain a vast fund of curious information about the early times in Kentucky. They were extensively drawn upon in the preparation of this sketch.

gaining popularity. And he was really, in many ways, a benefit to the community.

From the earliest days the navigation of the Mississippi had been a matter of great interest and importance to the settlers of Kentucky. They saw in it the only outlet to market for their surplus products, as the Allegheny mountains, infested with their savage foes, shut them off from any extensive commercial intercourse with the older settlements. But the lower portion of the river Mississippi and its left bank in entirety belonged to Spain. The treaty with Great Britain at the close of the war for independence had left the question of the navigation of the Mississippi in a peculiar position,* and the Kentuckians found themselves deprived of this, their only outlet to market.

The Spanish Government wished to possess the American territory west of the Alleghenies, and early began movements intended to seduce the people of this country from their natural allegiance. General Wilkinson was perhaps the first citizen of Kentucky who was tampered with by the emissaries of Spain, with the view of inaugurating a movement for the purpose of getting the people of Kentucky to separate from Virginia and form a commercial, or perhaps political alliance with Spain, which country, as an inducement to this end, offered to the Kentuckians the much coveted navigation of the Mississippi, as well as a market for their produce at New Orleans. These offers were not made to the mass of the Kentuckians, but secretly to some of the leaders, who, it was doubtless hoped, might influence the masses. Wilkinson, as a man then unrivalled in popularity, perhaps, in the Western country, and also as a man of a pliable disposition, of a "willing mind," of an adventurous inclination, and of undoubted influence, was clearly the most promising subject for the wiles and blandishments of Spain.

Accordingly, in 1787 he visited New Orleans, doubtless upon invitation, carrying thither a small cargo of tobacco. He was received with distinction, sold his tobacco for five times the current price of that staple in Kentucky, and returned home with much pomp in a carriage drawn by four horses, and surrounded by a retinue of slaves. Humphrey Marshall charges that he returned a Spanish subject. At any rate, Wilkinson

* Shaler.

boasted in Kentucky, publicly, that he had been granted the sole privilege of navigating the Mississippi from Kentucky, and of trading at New Orleans. This privilege was his first "*penston*"—the realization of his first bribe from Spain.

It may well be imagined that the "friendly move" with Spain gained its first force from this event, and that Wilkinson at least tried to earn his fee by attempting to influence others to join him in his compact with the Spaniards. That others did join him is not denied, for the times were ripe for such a project. But how many of these there were, and with what degree of illegal intent, will never be known, for the Spanish intrigue, historically speaking, is but shadowy, as its character was "shady."

The Kentuckians were poor in everything material except in unimproved lands, and the idea intended to be presented to them was that what Wilkinson could accomplish by a complaisant and accommodating disposition toward Spain, any other Kentuckian might accomplish by the same means. Soon after his return from New Orleans, Wilkinson began to build flatboats at various points on the Kentucky river, and to buy up the produce of the country for shipment into the Spanish territory. He it was who first encouraged the culture of tobacco by the settlers—a crop in which the State has now for many years been pre-eminent. At Boonesborough there may be seen to this day the ruins of some old tobacco warehouses which were built about that time, for the reception and storage of Wilkinson's purchases pending his stated voyages to New Orleans. He plied this trade for years, and filled the country with Spanish coin, which was almost the sole currency in Kentucky at that time. The early issues of the *Kentucke Gazette* contain advertisements in which he offers "the most liberal encouragement" for men to steer his boats down the river. However questionable Wilkinson's own purposes may have been, it must be admitted that he incited and fostered the first commercial impulses of the settlers, and opened for them a market for their produce and peltry.* But his ulterior designs were frustrated and

* The Historical Sketch Book of New Orleans, p. 15, says that of the 10,000 people then (about 1790) comprising the population of New Orleans: "Of the Americans some were of the *Kaintock* (Kentucky) element, worthy fellows who came periodically to the city in their flatboats, floating down the river laboriously and bringing with them up-country produce from the banks of the Ohio and the Illinois, and returning on horseback to their

rendered of no avail by Crockett, Muter, Edwards, Thomas and Humphrey Marshall, and others.

The history of the various attempts of Kentucky to secure a legal separation from Virginia and admission as a State into the Union would be too long, in detail, for the limits of this work. The effort was begun in 1784, and after nine different conventions had been held (all at Danville), was finally crowned with success in 1791, although Kentucky was not admitted as a State until 1792. While the first convention developed the fact that a majority of the people desired to separate from the mother State, there was then no thought of other than a legal and peaceable separation, and the same is true of the second and third conventions, held in May and August, 1785. But in the elections which took place in the spring of 1786, for the fourth convention, General Wilkinson became a candidate to represent the county of Fayette, and boldly and openly attempted the formation of a party upon the basis of an immediate and violent separation from Virginia. This doctrine, though eloquently upheld by a very popular man, shocked the good people of Fayette county, who opposed it strongly. General Wilkinson was elected only after the public recantation of his revolutionary sentiments, supplemented by the most despicable fraud and trickery in the election.

It was before the fifth convention was held that Wilkinson made his trip to New Orleans and entered into a "friendly move" with Spain; and this convention quietly met in Sept., 1787, and repeated the uniform decision of its predecessors for a legal separation by an unanimous vote.

Mr. John Brown, an eminent and distinguished citizen of Kentucky, and then sitting with Congress in New York as a Representative of the State of Virginia from the District of Kentucky, on July 10, 1788, wrote to his friend Judge Muter a letter which is made to play an important part in these matters by Mr. Marshall, in his History of Kentucky; and,

distant homes. * * * * *Kaintock* was a generic name given by the Creoles of those days to the Americans who came from the Upper Mississippi, and as the name imports, chiefly from the flourishing State of Kentucky. They were regarded as in some way interlopers on the profound conservatism of the city. There was an idea of something objectionable—even more so than in the later phrase, *Americain*—attached to the word. Creole mothers would sometimes say to ill-behaved and rude children, "*Toi tu n'es qu'un mauvais Kaintock.*" But still, fortunately for the future of New Orleans, the *Kaintock* continued to come, clad in his homespun and home-dyed jeans,—sometimes in the hunter's garb of buckskin—the advance guard of that subsequent great immigration of *Americains*.

therefore, so much of the letter as bears upon the subject in hand is here reproduced :

* * * Before this reaches you I expect you will have heard the determination of Congress relative to the separation of Kentucky, as a copy of the proceedings has been forwarded to the District by the Secretary of Congress a few days ago. It was not in my power to obtain a decision earlier than the 3d inst. Great part of the Winter and Spring there was not a representation of the States sufficient to proceed in this business, and after it was referred to a grand committee they could not be prevailed upon to report, a majority of them being opposed to the measure. The Eastern States would not, nor do I think they ever will, assent to the admission of the District into the Union as an independent State, unless Vermont or the province of Maine is brought forward at the same time. The change which has taken place in the general government is made the ostensible objection to the measure ; but the jealousy of the growing importance of the Western country, and an unwillingness to add a vote to the Southern interest, are the real causes of opposition, and I am inclined to believe that they will exist to a certain degree, even under the new government, to which the application is referred by Congress. The question which the District will now have to determine upon will be whether or not it will be most expedient to continue the connection with Virginia, or to declare their independence and to proceed to frame a constitution of Government. 'Tis generally expected that the latter will be the determination, as you have proceeded too far to think of relinquishing the measure, and the interest of the District will render it altogether inexpedient to continue in your present situation until an application for admission into the Union can be made in a constitutional mode to the new government. This step will, in my opinion tend to preserve unanimity, and will enable you to adopt with effect such measures as may be necessary to promote the interests of the District. In private conferences I have had with Mr. Gardoqui, the Spanish Minister at this place, I have been assured by him in the most explicit terms that if Kentucky will declare her independence, and empower some person to negotiate with him, that he has authority, and will engage to open the navigation of the Mississippi for the exportation of their produce on terms of mutual advantage. But that this privilege never can be extended to them while a part of the United States, by reason of commercial treaties existing between that Court and other powers of Europe. As there is no reason to doubt the sincerity of this declaration, I have thought proper to communicate it to a few confidential friends in the District, with his permission, not doubting but they will make a prudent use of the information, which is in part confirmed by dispatches yesterday received by Congress from Mr. Carmichael, our Minister at that Court, the contents of which I am not at liberty to disclose.

Congress is now engaged in framing an ordinance for putting the new government into motion ; it is not yet completed, but as it now stands the elections are to be made in December, and the new Congress to meet in February, but it may undergo alteration. Ten States have ratified—this State is now in session—what the result of their deliberations will be is, as yet doubtful ; two-thirds of the members are opposed, but 'tis probable they may be influenced by motives of expediency. N. Carolina will adopt. Time alone can determine how far the new government will answer the expectations of its friends ; my hopes are sanguine, the change was necessary.

I fear, should not the present treaty at Muskingum prove successful, that we shall have an Indian war upon all our borders. I do not expect that the present Congress will, in that case, be able to take any effectual measures for our defense. There is not a dollar in the Federal treasury which can be appropriated to that purpose. I shall leave this place shortly, and expect to be at the September term. I have enjoyed my usual good state of health, and have spent my time here agreeably. I am, with great esteem, your most humble servt.

J. BROWN.

To Hon. George Muter.

This letter which was not made public until 1790, as will afterwards appear, is similar to one received about the same time by Hon. Samuel McDowell, who had presided at most of the Danville conventions ; and the letter to him, or the substance of it, was not published until 1806. Who the other "few confidential friends" were, who were addressed in a like strain, has not yet been developed. Mr. Marshall's analysis of these letters, in his history of Kentucky, makes them appear treasonable to all intents and purposes. And let it be said in this connection that the publication of the letter in this work, and the synoptical sketch of the so-called Spanish Intrigue, are necessary to explain the bitter enmity which long existed between Humphrey Marshall, on the one part, and James Wilkinson, John Brown, Harry Innes, Benjamin Sebastian and others, on the other part ; as well as to show the grounds upon which Mr. Marshall attacked them in his history of Kentucky.

The sixth convention met at Danville in July 1788, and it was made known to them that Congress had refused Kentucky admission to the Union, and had referred the whole matter to the new government which was, soon after that time, to go into operation under the present Federal constitution. It appears that Mr. Brown did not notify the convention

that the Congress of the old Confederation, as expressly stated in resolutions upon the matter, declined to admit Kentucky into the Union solely upon the ground that Virginia had recently entered into the new Union, which was shortly to go into effect; and that an Act of admission by the Congress of the old Confederation would have no force; and that the matter was therefore referred to the new Congress. As the representative of Kentucky in Congress it was plainly Mr. Brown's duty to give the convention full information upon this point; and that he omitted to do so is made a matter of serious import in Marshall's History.*

The news, as it reached the convention, caused much anger and disappointment, as may reasonably be supposed. The people, for lack of full information, imagined that they had been unfairly dealt with by Congress, and much indignation ensued.

Gen. Wilkinson, who had now returned from New Orleans, became bolder than ever in the advocacy of his "friendly move" with Spain. The pretexts offered by him were now numerous and cogent. Under the existing circumstances Kentucky was almost powerless to defend herself from the Indians; Congress had refused (as the people were led to believe) to admit Kentucky to the Union, even with the consent of Virginia; and the subject of the navigation of the Mississippi was again brought to the front. In 1786 John Jay, the Minister of Foreign Affairs, and also the special envoy to treat with Spain, but without authority to concede the claim of the United States to the navigation of the Mississippi without the consent of Congress, had proposed to the Spanish Minister to suspend this claim for a period of twenty-five or thirty years in exchange for stated concessions to American commerce highly favorable to certain Eastern States, but of no importance whatever to the people

* "Political Beginnings of Kentucky" pages 179 and 180. The matter of the Danville convention of July, 1788, being under discussion, the statement is made in connection with the vote of thanks passed by that convention to Hon. John Brown for his faithful services in Congress, that "the letter from Brown to Muter was known to Marshall and Edwards, and McDowell had its duplicate. The estimate of those who knew of the letter and its contents, and of the interview with Gardoqui was expressed in a resolution [*the one referred to*] for which Muter and Marshall voted, along with every other delegate."

The Marshall here mentioned was Col. Thos. Marshall.

Brown's letter to Muter was written in New York on July 10, 1788; the convention met in Danville, Ky., on July 28, 1788. It is hardly probable that at that time a letter could reach Danville from New York in eighteen days. It may be safely claimed that Muter did not receive the letter until after the adjournment of the Convention.

of Kentucky, whose commercial welfare depended almost entirely upon their right to navigate the Mississippi.

* "Wilkinson's party—we must believe with fraudulent intent—spread the report that it was Congress that was making this arrangement with the Spaniards; when, in fact, it was only a matter of discussion between Mr. Jay and the Spanish envoy, and never was presented to Congress."

The people, not taking favorably to the revolutionary project, were edified with recitations of what might be done for their advantage if they would only shake off the thralls of the impotent Federal government and act for themselves. General Wilkinson's performance on the occasion of his visit to New Orleans was paraded with great tact—"he had secured by his personal negotiation that which the Federal government had offered to barter away. The results of his work were used as evidence that the Kentucky community could do very well with its interests if the impotent Federal Government no longer had a hold upon them."†

Marshall's History says (p. 352, edition of 1812): "At the July convention in 1788, the Spanish party, in a manner, became organized. The most of them met face to face, they convened together on the subject of declaring Kentucky independent, and organizing a government separate and distinct from the Union. They became acquainted with each other's opinions, and they acted in concert, as men having in view a common object which required their joint efforts, without any express stipulations as to the means, or specific contract as to contribution."



Humphrey Marshall in the Danville Convention.

Collins and other historians of Kentucky state that Humphrey Marshall was a member of the Danville convention of 1787. Mr. Marshall himself, in his open letter to Thomas Bodley, in the *Kentucky Gazette* of October 13, 1806, in reference to his vote in the Virginia convention of

* Shaler, p. 100.

† Idem, p. 101.

1788, says: "But upon this occasion I was not punished by the people to the full extent of my deserts, for on my return home the next year they elected me to the convention which was to determine and did determine the legal separation which afterwards took place." The "next year" alluded to was 1789, and we are therefore bound to conclude that Humphrey Marshall sat in the convention of that year, as well as in the convention of 1787, as stated by the historians.

Treating of the November, 1788, convention in his history, the question before the body being a motion to refer to the committee of the whole the resolutions of a previous convention advocating the right of Kentucky to take independent measures for securing the navigation of the Mississippi, Mr. Marshall says:

Vol. 1., p. 318: General Wilkinson was in favor of the reference. He was laborious in the exposition of the document, but dwelt particularly on the importance of the navigation of the Mississippi to the people of Kentucky—a subject which he again observed was not before the Committee of the Whole although, by its interest and magnitude entitled to the first place in their deliberations. He was ambiguous as to the proper course to be pursued in order to obtain its use, nor was this the time to propose, as he said, any particular measure for that purpose.

Spain had objections, he remarked, to granting the navigation in question to the United States; it was not to be presumed that Congress would obtain it for Kentucky, or even the Western country only, as her treaties must be general. There was one way, and but one that he knew of, for obviating these difficulties, and that was so fortified by constitutions and guarded by laws that it was dangerous of access, and hopeless of attainment under present circumstances. It was the certain but proscribed course which had been indicated in the former convention, which he would not now repeat, but which every gentleman present would connect with a declaration of INDEPENDENCE, the formation of a constitution, and the organization of a new State which, he added, might safely be left to find its way into the Union on terms advantageous to its interests and prosperity.

He expatiated on the prosperous circumstances of the country, its increasing population, its rich productions, and its imperious claims to the benefits of commerce through the Mississippi, its only outlet.

That the same difficulties did not exist on the part of Spain to concede to the people on the western waters the right of navigating the river, which she had to a treaty with the United States, there were many reasons for supposing. That there was information of the first importance on that subject

within the power of the convention, which he doubted not it would be equally agreeable for the members to have and for the gentleman who possessed it to communicate. This, in substance, said, the orator seated himself, and all eyes were turned on Mr. Brown, then, as has been said, a member of the convention, as well as of Congress. A member then desired the gentleman to communicate what he knew.

He, with all the mysterious gravity of one possessed of more than Delphic knowledge and ready to deliver the oracles of fate, "rose profound" and said :

"That he did not consider himself at liberty to disclose what had passed in *private conferences* between the Spanish Minister, Don Gardoqui, and himself ; but this much in general he would venture to inform the convention—that, *provided we are unanimous, everything we could wish for is within our reach!*"

And down he sat—pregnant with conspiracy, but ill-concealed beneath his cloak of Spanish taciturnity. Whether, in his speech, his eye caught some other marked with a curious and penetrating scrutiny (for such there were) and under which he felt rebuked into silence; or he had previously limited himself to this ambiguous response, it would be useless to conjecture. So truly oracular and laconic was it, that, although a confirmation of what Wilkinson had said as to information, since it avowed the fact of *private conferences* with the Minister of Spain, yet it seemed unsatisfactory, even to him; and was quite so to those who had expected some information which was to be useful by its details. However, nothing more being expected from Mr. Brown at that time, the General rose once more, and as if impatient for the further information of the convention and the further display of his own knowledge and talents, and yet more anxious to make a strong impression on the minds of his audience on the subject of navigation, said it was a topic he had much at heart; that he had some practical knowledge of the utility of a commerce with Orleans, and ever desirous of imparting his information as of sharing his profits for the general good, he would, with submission, read an essay on the subject of the navigation and commerce of the Mississippi. This spoken, he paused, and the reading was called for, no doubt by previous concert. The manuscript was immediately produced—it occupied some fifteen or twenty sheets of paper—and the reading commenced. As it progressed each sheet, being loose, was handed to Mr. Sebastian, then known as one of the General's particular friends—since as a *pensioner* of Spain—and one of the Judges of the Kentucky Court of Appeals.

The essay was addressed to the *Intendant of Louisiana!*

Vol. 1. p. 324 : That the people generally did not execrate these machi-

nations at the time is to be imputed to their not knowing of them, and to the difficulty of bringing the proof of them in such form as to convince them of the nature and consequence of the facts that were known. That the authors and coadjutors of the nefarious project of putting Kentucky out of the Union retained their popularity can only be ascribed to the same cause—an ignorance of their real characters, of their double dealings, of the effects of their plot, of the official situation of most of them, and the care with which they all concealed or denied the fact or the consequences of their intrigue. That the danger was over before it was publicly understood is no reason why the remembrance of it should not be perpetuated, although it may be assigned as the cause for tolerating those who were concerned.

The party, headed by Col. Thomas Marshall, in favor of a legal separation from Virginia, proved the stronger in this convention, and adopted resolutions leading to the subsequent separation and admission of the State into the Union; and in these resolutions the opposing party concurred without a murmur, so far as could be heard. The Spanish intrigue then died out, but a futile effort was made to revive it in 1794. It was partially exposed in 1806 by the *Western World* newspaper, and later by Marshall's History of Kentucky, references to which exposures will again be made.

As to Humphrey Marshall's prominence in the Danville convention, or as to what notable part he acted there, nothing is said by the historians. He probably was not much upon the floor of that body, which had in it many very able men; and he was only twenty-eight years old at the time. One thing is sure: he was pronouncedly and actively opposed to any and every scheme looking to an alliance with Spain, or any other foreign power; to any and every step for separating Kentucky from the Union; to all illegal and revolutionary proceedings for a separation from Virginia. He was for patiently *waiting*, trusting to the sense of justice of both Virginia and Congress. For this he was resolute, bold and aggressive; ready to risk all and to dare all, and, if necessary, to fight all. He was one of those who stood by and backed Col. Thomas Marshall, then the leader of the Federalists in Kentucky, and aided him in thwarting the schemes of Wilkinson, Sebastian and company. There are other ways of being active and influential in a convention besides making speeches upon the floor.

The Connolly Affair.

In October, 1788, Dr. Connolly, then a resident of Canada, and presumably if not actually an agent of the British Government for the seduction of Kentucky from her allegiance to the Atlantic States, visited Kentucky and conferred with several Kentuckians, among them Col. Thomas Marshall. From this fact an effort has more than once been made to connect the Marshall family with what may be called "the British Conspiracy"—though, so far as is known, no such conspiracy was ever actually formed, or even seriously discussed. Wilkinson claims to have frightened Dr. Connolly out of the State, and probably he did. At any rate Connolly left, and stood not upon the order of his leaving.

One result of his visit to Kentucky, however, was the obtaining by him of a paper headed "Desultory Reflections by a Gentleman of Kentucky" in which strong grounds are taken in behalf of an alliance between Kentucky and Great Britain. This paper was forwarded by Connolly to Lord Dorchester, at Quebec, and by him to Lord Sydney at London. A copy of it was only recently found in the Canadian archives; and the matter was for the first time printed in Col. John Mason Brown's cunningly devised work, "The Political Beginnings of Kentucky."

In that work, page 188, the statement is made that Dr. Connolly, in his visit to Kentucky in October, 1788, "conferred with no more than four men of importance in Kentucky—Gen. James Wilkinson, Gen. Charles Scott, Colonel Thomas Marshall and Judge George Muter." Then, in relation to the "Desultory Reflections by a Gentleman of Kentucky," in which an alliance between Great Britain and Kentucky is not only suggested but invited, by the Kentuckian, the author of "Political Beginnings" argues that these "desultory reflections" could not have been written by either Wilkinson or Scott, for reasons stated, and that therefore "there is left the unpleasant suggestion that Thomas Marshall or George Muter was its author," &c., &c.

It is impossible at this day to say with how many prominent Kentuckians Connolly had conferred. There was certainly another besides the four named. Marshall's History, ed. 1812, page 389, states that Connolly's conference with Thomas Marshall and George Muter "was

brought about by Col. John Campbell, who introduced him as a gentleman from Canada, who had come to look after some land which had been confiscated during the revolutionary war."

Wilkinson was doubtless the author of the "Desultory Reflections." He was a conspirator by nature, and as such was likely to have as many schemes as possible on foot, so that in the event of one failing he might have others to fall back upon. He says himself (despatch to Miro, Feb. 12, 1780) referring to Connolly: "I received him courteously, and as I manifested favorable dispositions towards the interests of his Britannic Majesty, I soon gained his confidence," &c., &c. (see Smith's History of Kentucky, page 439.)

This information Wilkinson pretended to be revealing, as a spy, to Miro. While it is not to be supposed that such a man would, in such a connection, state all that he knew, or had done, still, he states enough to lead the reader of to-day, to whom his character is fully revealed, to presume that he furnished Dr. Connolly those "Desultory Reflections" as one means of gaining his confidence. He could scarcely have gained it thoroughly with less. Marshall's History, edition of 1812, page 389, says, referring to the conference with Col. Marshall and Judge Muter: "Circumstances were not thought favorable by the Doctor to a full disclosure; and he took his leave after an imperfect communication of his views and projects." In other words, he did not receive sufficient encouragement to induce him to yield his full confidence, as was the case when he met Wilkinson.

The author of "Political Beginnings" states (page 188) as one reason why Wilkinson could not be the author of the "Desultory Reflections," that "he was fully committed to Spain." Yet on pages 186 and 187 of "Political Beginnings" is a quotation from a letter from Lord Dorchester to Lord Sydney, retailing the information gathered by Connolly in Kentucky, in which it is distinctly stated that the project "to declare independence of the Federal Union, take possession of New Orleans, and look to Great Britain for such assistance as might enable them to accomplish these designs," was "the general result of the more private counsels among" "those who are gained over to Spanish views." This is not the sequence of the words as they are used, but it is what they mean;

and Wilkinson was the leader of those then gained over to Spanish views, among whom can not be reckoned Col. Thomas Marshall and Judge George Muter.

The foot-note on page 184, "Political Beginnings," states that Col. Marshall did not inform Washington of his conference with Connolly in October, 1788, until February, 1789; all of which is true enough, but nothing derogatory to Col. Marshall may be inferred from this. Marshall's History, page 387, says: "January, 1789, the elections were held for choosing electors for President and Vice President of the United States, under the constitution. No votes were given in Kentucky. The first Wednesday in February the electors were to meet at the seat of government and vote for those officers. The new government was to commence its operation on the first Wednesday in March succeeding. General Washington had already been designated in public opinion; and it was thought that the electors would have little difficulty in consecrating this beloved man to the office of President. * * * * Under this impression Col. Thomas Marshall, as early as the 8th of February, 1789, wrote to the President-elect and gave an account of the state of the District and of such symptoms of foreign intrigues and internal disaffection as had manifested themselves to him," etc.

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For Col. Marshall to have written earlier, before Washington had any official authority, could have accomplished nothing; and it suffices that he so timed his letter as to reach the new President at or about the time when it was presumed that he would be invested with his great office. The country was without a head and in an inchoate state from the dissolution of the Continental Congress in the summer of 1788 until the 30th of April, 1789, when Washington was inaugurated President under the new constitution.



His Relations With the Public Men of Kentucky.

It has already been seen that Mr. Marshall lost caste with the political leaders of Kentucky by his vote in the Virginia convention; but after the part he took in the Danville conventions, and in the discussions of the times, the dislike in which he was held by these men became accent-

uated, and more sharply defined. He was "marked down" for political destruction, and from that time forward his life was almost a continual contention with men who frequently prevailed against him, so far as his political aspirations were concerned, but who could neither silence nor crush him. Stricken down in one place, he immediately arose in another, and always with a defiant front. He was the problem of his times, and was never solved by his contemporaries. It appears that while he was a markedly brilliant and intellectual man, possessed of all the statesman-like qualities, he lacked the one essential quality of the successful politician—"policy." This he had not. His candor was his ruin. Conscious of the perfect rectitude of his own motives and impulses, he imputed, and probably often unjustly, disreputable motives and impulses to those who held opposing views. In this way he became hostile to most of the leading Kentuckians of his times. With the exception of Joseph Hamilton Daveiss, John Rowan, John Allen, John Pope, Gabriel Slaughter, the Marshalls, McDowell's, and some others, he had few political friends in Kentucky of the prominent class.

Dr. Samuel Johnson, who "loved a hearty hater," would have been well-pleased with Humphrey Marshall, who hated, where he did hate, with an intensity almost sublime. In response to a challenge from Hon. Richard M. Johnson in 1811, he said: "Self defense, and the severest retaliation in my power are among the first rules of my morality; and he or they who assault me should anticipate a resistance to the extent of my capacity." In 1806, in a newspaper controversy with Judge John Coburn, he wrote: * * * "And I demand of Judge Coburn an instance of my enmity to any man of worth until after he had shown himself to be my enemy. I have, at some times, at least, been supposed to have some influence, and I defy the whole host of my enemies to produce an instance where that influence has been used against a man of merit in favor of one deficient in worth. In fact I can aver, and the occasion will justify me, that I have never imbibed the exclusive spirit of party, nor ever would I permit myself to be governed by it, although it has so often and so unjustly been made to operate against me—a spirit which sets truth at defiance, holds justice in chains, sanctions acts of vice, and upholds the knave in office—a spirit, in fine, which vitiates the officer,"

prostitutes the man to the basest practices, for party purposes." And in another open letter he says: "Could I have been the tool of any man or set of men, I might have been the companion of Judge Coburn! I might have escaped the malice and power of his masters and prompters—I might have avoided the most serious difficulties with which I have had to encounter. That I would not be a tool is the primary reason why I am at this moment involved in a controversy, and am told by this very *tool of a Judge* that I have been at variance with so many *first and useful characters in Kentucky*. * * * I know my enemies. I know that if they can injure me they will do it, because the independence of my character is in their way, as it has heretofore been."*

The study of Marshall's History of Kentucky shows that of all the author's enemies, he hated Hon. John Brown the best—or worst—as he doubtless had good reason to do. Mr. Brown was one of the most brilliant and gifted men of his day, and combined in his handsome person and winning address the subtlest arts of obtaining and holding popularity. He represented Kentucky in the Federal Congress (mostly in the Senate) for eighteen years in succession, retiring finally in 1806, at the early age of forty-eight years. He had access to the popular ear, and found but little trouble, perhaps, in bringing about the unpopularity of Humphrey Marshall, and in holding him up to public odium and indignation. Hon. John Mason Brown, in his Frankfort Centennial Address, says: "Between Mr. Humphrey Marshall on the one hand and Senator John Brown and Judge Harry Innes on the other, an enmity had existed for twenty years [before 1806]. It originated in intuitive mutual dislike, and grew and endured because of the utter dissimilarity of the men. In tastes, in habits of life, in political feeling, in religious views, they differed completely." This is, doubtless, essentially true; but Mr. Marshall's enmity toward Mr. Brown does not appear to have extended back so far. In 1807 Mr. William Littell published a little book, written for hire at the instance of Mr. Brown's friends and others, (as Mr. Littell stated under oath) in which he made it appear that in 1793 Humphrey Marshall, then a member of the Legislature from Woodford county, voted for Mr.

* Kentucky Gazette, November 3, 1806.

Brown for the long term in the United States Senate. If this is a fact Mr. Marshall must at that time have held at least friendly feelings for Mr. Brown, who, in the nature of the case, must have been secretly his enemy. The probability is, however, that Mr. Marshall did not vote for Mr. Brown for Senator.



He Breaks Up a Duel.

Somewhere about this general time, to-wit, in 1790, considerable public excitement was produced by the discussion of Mr. Brown's secret and confidential letter to Judge Muter, which has already been quoted from, and which, until this time had not been made public. Mr. James Markham Marshall had recently come to Kentucky, and was then a candidate for Congress against Mr. Brown. In his canvass he sprung some charges, based upon this letter, upon Mr. Brown, and publicly denounced him. Mr. James Brown, a younger brother of Hon. John Brown, and by many considered the ablest of his family, took umbrage at this, and he not only resented Mr. James M. Marshall's characterization of the writer of the letter, but he denounced as false the statement that his brother had written such a letter. Judge Muter, who had hitherto resisted all inducements to publish the letter, now gave it for publication to the *Kentucky Gazette*, for the purpose of averting, as he stated, a duel between James Brown and James M. Marshall, between whom a challenge had already passed.

Judge Muter's amiable designs in this matter, however, were frustrated by his tardiness, and the arrangements for the hostile meeting were carried forward to completion. Among the terms of the meeting was the clause that none but the principals, seconds and surgeons should be present. Humphrey Marshall, however, desiring to witness the affair, allowed his curiosity to get the better of his discretion, and he posted off to the duelling-ground, near which he concealed himself behind a large log, from whence he might have a good view of the proceedings. He generally carried a long staff, or stick, and this he placed across the top of the log. The duellists reached the ground and the preliminaries had been arranged, when Humphrey Marshall was discovered in his retreat.

Mr. Brown and his friends then refused to fight, alleging that "Old Humphrey Marshall" was in ambush on the field with a gun trained from a dead rest to assassinate Mr. Brown in case he should kill his opponent. Mr. James M. Marshall laughed and said, "I understand you, gentlemen," and the combatants left the field.

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The Defection of Judge Muter.

Previous to this time Judge Muter had been friendly with Humphrey Marshall, and the whole Marshall family, but soon afterwards his friendship changed to an enmity which lasted during the remainder of his life. He had been friendly and intimate with Col. Thomas Marshall in Virginia, and after both had come to Kentucky, Judge Muter, who was impecunious, stayed a good deal of his time at Col. Marshall's house, and was placed under many obligations to him. When John Brown wrote his confidential letter to Judge Muter, the latter showed it to Col. Marshall, or communicated to him its contents, and it was this information which enabled Col. Marshall, Humphrey Marshall, and others, to take measures to circumvent the designs of Spain, a work in which they received the hearty co-operation of Judge Muter.

Mr. Marshall, in his history of Kentucky, makes the following reference to Judge Muter's defection from his long-trusted friends, the Marshalls:

Vol. 2, p. 78, (1792). In filling up the Court of Appeals George Muter, who, as it has appeared, had been the Chief Justice of the Old District Court, and the coadjutor of Col. Marshall in opposing the violent separation then offered to be imposed upon the country, was left out of the nomination—in fact, was unprovided for under the new government, and Harry Innis was appointed Chief Justice.

This gentleman, being in high favor, was, about the same time, appointed upon the recommendation of a partisan to the Kentucky District Court of the United States, by the nomination of the President, &c.

After some suspense for the result, the United States gave the best salary, and Mr. Innis became the Federal Judge. This produced a vacancy in the Court of Appeals. During all this time the Ex-Judge, Muter, had been on his former terms, in a manner, the intimate of Colonel Marshall; while several individuals of the family had interested themselves to get him appointed to

the vacant seat in the Court. Others also interested themselves, nor was he inactive. At length he received the appointment; and from that day forth, as if faithful to some new contract, he dropped all acquaintance with the family, and never afterwards entered Col. Marshall's door. The tenor of his new lesson could not be mistaken.



As Surveyor of Woodford County.

Soon after Woodford was erected into a county, Mr. Marshall moved into its boundaries and established his home there, upon one of the tracts of land which he already owned in the county. In 1790 he was appointed surveyor of Woodford county, by Beverly Randolph, then the Governor of Virginia. This office, which was then quite a lucrative one, he held for two years or more. In 1792 there was a proposition to divide the county, which had passed the lower house of the Virginia Legislature, but was defeated by a few votes in the Senate, and over this matter arose one of those bitter controversies which so thickly checkered Humphrey Marshall's whole life. Mr. John Craig, Sr., published a statement that Humphrey Marshall had appeared in Richmond the day before the bill was put upon its passage in the Senate, and by personal solicitation had secured its defeat, and Mr. Craig ascribed as Mr. Marshall's motive in the matter the fact that the division of the county would necessarily and materially lessen his fees as public surveyor. Mr. Marshall denied this statement in the forcible manner characteristic of all his denials, and hence arose the controversy between the two men. Strange to say, each proved the truth of his statement by incontrovertible witnesses, as it appeared. John Brown certified that Mr. Marshall talked with him in Richmond the day before the bill was voted on in the Senate, and, in fact, brought him letters from Kentucky. Arthur Fox, and other gentlemen of Richmond, published statements to the same effect. On the other hand, Mr. Marshall brought forward the certificate of a tavern-keeper living some forty miles from Richmond, to the effect that Humphrey Marshall had spent the night before the day in question at his tavern, as his books showed, Mr. Marshall being then on his way from Kentucky to Richmond. John Marshall, afterwards Chief Justice

of the United States Supreme Court, also published a statement that Humphrey Marshall reached his house in Richmond on the evening of the day in question, and that one of the first things he told his cousin Humphrey was that the Senate had refused to pass the bill dividing Woodford county. Mr. Marshall brought forward various other witnesses who proved that the bill had been defeated by the Senate before he reached Richmond. This incident is in itself trivial, but it is a singular instance of how men may be mistaken on any matter of fact, as no less persons than John Brown and John Marshall, either one or the other—was as to the time of Humphrey Marshall's arrival in Richmond.



Service in the Legislature.

In 1793 Humphrey Marshall was elected to represent Woodford county in the Lower House of the Kentucky Legislature, a position to which he was re-elected in 1794. He appears to have been an active member, and to have acquired considerable popularity on account of his efforts in behalf of the interests of the people. In the session of 1793 he introduced an act, which was passed, regulating, classifying and simplifying the assessment and taxation of lands, which gave very general content for many years; whereas the law which his act superceded was crude, vexatious and oppressive.

About this time Kentucky was beset by many opposing forces. It seems that the Spanish intrigue was re-opened in the State in 1793, and about the same time the great mass of the people went wild, almost, over the French revolution, and so-called "Democratic Clubs" were established in various parts of the State, all known to be favorable to France; and agents of the French Government were in the State commissioning officers and recruiting soldiers to march in behalf of France to the overthrow of the Spanish dominion in Louisiana. Many leading Kentuckians were engaged in a constant endeavor to excite the prejudices of the people, if not against the Federal Government itself, at least against the administration of Washington. In this they made especial use not only of the question of the navigation of the Mississippi, but of the failure of

the government to thoroughly suppress the incursions and depredations of the Indians. The defeat of St. Clair, who was a Federalist, supplied them with much of their campaign thunder, and the people were systematically wrought to the highest pitch of dissatisfaction with the supposed impotency of the General government. A meeting of the Democratic Society at Lexington in 1794 is often alluded to by the historians of the times as especially seditious, or, at least, extravagant, in its temper and proceedings. The following extract from the *Western World* of October 6th, 1806, is interesting in this connection; but in justice to Mr. Brown it must first be said that he afterwards established the fact that he was not present at the meeting in question:

* * * * Brown, Wallace and Sebastian were, about the same period, incessantly convening meetings of the citizens from different parts of the State under the plausible pretense of petitioning Congress for the redress of some grievance or other; but, in reality, to procure an opportunity of pouring forth their vindictive spleen against the executive government. A celebrated meeting of this description was called together at Lexington on the 28th of March, 1794, where what Mr. Magruder calls "*the misguided impetuosity of democratical licentiousness*" was sufficiently displayed. Although the meeting was convened by the *happy triumvirate* which we have named, yet it was judged prudent that a person of opposite principles should be placed in the chair. They fixed upon George Muter for this purpose; but their entreaties appearing to have no effect upon the stubborn humor of the old Scotchman, Wallace took hold of him by the right shoulder, and Sebastian by the left; while John Brown, pushing up his rear, literally forced him into the chair." * * * *

Throughout all the clamor of these times Humphrey Marshall was not only a warm champion of the Government, the Constitution and the Union, but a zealous friend of Washington's administration. In the darkest hour of the Government's troubles light beamed again with the bloodless suppression of the Pennsylvania whisky insurrection by Gov. Henry Lee, of Virginia, at the head of a little Federal army; as well as by the the victory of Gen. Wayne, at the head of a larger Federal army, over the Indians of the Northwest. The Federal government, in these movements, showed its strength, and its power to protect its citizens and enforce its laws, and commended itself to their approbation. The

result was a powerful reaction in favor of the Government and the administration.



Elected to the United States Senate.

As the champion of both the Government and the administration, Humphrey Marshall was the beneficiary of the reaction in their favor. In the winter of 1794, then a member of the Legislature himself, he was taken up by the Federalists as their candidate for United States Senator, as a proper recognition of his services, and a just tribute to his superior abilities and unquestioned courage. He was opposed by no less able and distinguished a gentleman than Hon. John Breckinridge, a statesman of the highest ability and of unimpeachable integrity—a pillar of strength in his day; and now chiefly known as the author of the Kentucky Resolutions of 1798. Mr. Marshall was elected by a small majority. He makes the following reference to the event in his history:

Speaking of the Legislature of Ky., 1794, (Vol. 2, p. 161). A corroboration of the good temper of this Assembly towards the General Government is the election of Humphrey Marshall to the Senate of the United States to fill the vacancy occasioned by the expiration of the term of John Edwards who had drawn out, pursuant to the Constitution of the United States. On this occasion the factions opposed to the administration of the Federal Government, both French and Spanish, with mortal antipathy to Mr. Marshall's politics, brought John Breckinridge, then, or recently, President of the Democratic Society of Lexington, to oppose him. The majority in favour of Marshall was but small. And without doubt, that he had the majority is to be ascribed to the recent success of Federal measures under Generals Wayne and Lee.

Mr. Marshall's career in the Senate was a notable and courageous one. It does not appear that he was active in debate, for though he was a strong and bold speaker he was no orator, and it is likely that he was seldom on the floor. But he was urgent for all the Federal measures—the Jay treaty and the alien and sedition laws among others—all of which were peculiarly obnoxious to the majority of his constituents. It is worthy of note that all of Mr. Marshall's public acts which drew odium and unpopularity upon him have been vindicated by subsequent history and the logic of events, except his advocacy of the alien and sedition

laws alone. It has, perhaps, fallen to the lot of no other public man to be condemned for so many things, and to have future generations commend so many of these things as right. This fact alone is a sufficient refutation of the mean imputations which cling to the memory of "Old Humphrey Marshall," even to this day.

It was his advocacy of the Jay treaty which gave him the most of his unpopularity, and almost killed him utterly, politically. Of this he says in his history :

1795. (Ky. Legislature) Vol. 2, p. 172. It was attempted at this session to instruct Mr. Marshall, one of the Senators from the State in the Congress of the United States, personally, how to vote in future on the subject of the treaty recently formed with Great Britain, and called "Jay's Treaty," for the conditional ratification of which he had voted the preceding June ; his colleague, who had voted against it, needing no instructions. After debate, however, the resolution was amended so as to make it read "Senators ;" who were charged to vote against the treaty in all subsequent stages of its appearance. This instruction was eventually rendered inoperative by the British Government, who at once acceded to the modification proposed by the Senate, and thereby took from the President the necessity of laying the subject again before that body—which saved the erratic Senator from another offence ; for certain it is that with the impressions under the influence of which he acted, he should have disobeyed the instruction. The subject was one of no local character, but general to the United States—of which he was a Senator. But peace was of infinite importance to Kentucky, as well as to the United States ; the treaty was of a nature to insure it to both. Free of the Indian war and of her embarrassments with Britain, the Federal government could attend to Spain, and to the factions within her own bosom, with an undivided observation. And notwithstanding this untrained Senator had heard an argument from his colleague, the burden of which was to prove that should the treaty be executed and the posts on the lakes put into the possession of the United States, that, nevertheless, the British would still control the Indians and keep them at war with the frontiers, so that even Kentucky could gain nothing in fact ; while the United States made concessions in giving up her negro claim, &c., for which they would get nothing, &c. All of which seemed so much like prejudice, party spirit and folly, as to be ascribed to them, without in the least moving the judgment toward a change. While the instruction, being a peremptory mandate, without any argument, was as little calculated to have that effect. In vain, therefore, were they addressed to one who acted on his own convictions, without interposing calculations of popularity in the line of his understanding of his duty, and how to discharge it.

The ratification of the treaty was indeed a severe blow to the *French faction* throughout the United States, and to both that and the Spanish intrigue in Kentucky; where, exasperated against their Senator, his colleague, Mr. Brown, even thought himself justified in saying publicly, in the idiom of the nation he then subserved, that "he ought to be *decapitated*."

To counteract the enthusiasm, folly and misrepresentations which circulated in newspapers, for there were then two in Lexington, the offending Senator wrote a series of explanations of the treaty in a style both decorous and temperate, which he signed with his own name, and offered to be printed as articles of useful public intelligence; but which were refused publication by one editor; the other agreeing, on application, to print them if he was paid; and actually charged and was paid for printing them, as for articles of a private nature.

Vol. 2, p. 182—1795—At this session it was made a complaint that 6 years was too long a term for a U. S. Senator. A memorial on the subject was referred, but never came to maturity.

The paper in which Mr. Marshall's defense of the Jay treaty was published was the *Kentucky Gazette*, where it may still be seen in the file for 1795. This defense consists of a series of about fifteen numbers, which would make a good-sized book, all of which are pregnant with the fire of the author's genius. They conclude with these words: "In considering the objections to this treaty I am frequently ready to exclaim: Ah! men of faction! friends of anarchy! enemies and willful perverters of the Federal Government! how noisy in clamor and abuse, how weak in reason and judgment appear all your arguments!"

Mr. Marshall's trouble and expense in printing this defense, however, availed him naught, for there at once burst upon his devoted head a storm-cloud of public wrath, which is probably unequalled in the history of the United States. He was burned in effigy, denounced by public meetings in various counties,* taken out by a mob to be "ducked;" villi-

* *Ky. Gazette*, Oct. 3, 1795: At a numerous meeting of the freemen of Mercer Co. at the Court-house, in Harrodsburg, on the 22d day of Sept. 1795, being Court day for the said county, the time and occasion of the meeting having previously been advertised, the following resolutions were unanimously agreed to, and ordered published:

Resolved, as the opinion of this meeting that Humphrey Marshall, one of the Senators from this State in the Congress of the United States, has betrayed the trust reposed in him by voting for the conditional ratification of the treaty totally concluded between America and Great Britain, and has thereby proved himself to be unworthy of the confidence of the people of Ky.

Resolved, therefore, that it be recommended to the Legislature of this State to instruct the said Marshall to vote against any further ratification of the said treaty upon every future occasion on which it may be brought before the Senate. * * *

fled in print; avoided and looked upon askance by former friends, and rated as chief among ten thousand villains, and altogether villainous. He did not even bow his head to meet the storm, but faced it defiantly, as only a brave man with a clear conscience and conscious integrity could have done.

A writer in the *Kentucky Gazette* for October 10, 1795, signing himself "A. B.," says:

For God's sake, Mr. Bradford, find out and tell us what *materials* this man is made of. There must be something in his *composition* different from what is to be found in any other of the human race. No other man could have acted as he has done. Upon his return to this country, after having done everything in his power to injure it, he has met with the universal curses of his fellow-citizens; those who had voted for him publicly confessed their error, and declared their repentance of that act; his friends deserted him; his acquaintances would not speak to him; he was obliged to withdraw precipitately from a large meeting of the people; and every face he saw spake a detestation of him. Thus situated, instead of withdrawing himself from public observation; instead of waiting a more favorable opportunity of *palliating* the *infamy* of his conduct, he comes forward, fills the public prints with a false but studied justification of himself; and, not content with this, attacks every individual and every meeting of *free men* who have ventured to give their opinions of his favorite treaty.

The reader of to-day can at once see that there was nothing in the Jay treaty to call for such persecution of a man who had voted for it, and the motive for the persecution of Mr. Marshall must be looked for elsewhere than in his support of the treaty. Twenty-two out of thirty Senators voted for it, and it was approved and signed by Washington; and if any culpability attached to the matter Washington was more culpable than Humphrey Marshall, for it was drawn up by John Jay in accordance with Washington's suggestions. Mr. Marshall says that the Jay treaty, which is now universally acknowledged to have been a good thing, broke up the plots of the French and Spanish intriguers in Kentucky; and that they, in the raging malice of disappointed ambition, turned upon him to crush and destroy him, in revenge; a matter which they could easily accomplish, as they had the ear of a vast multitude of the unthinking, who always sneezed when these men took snuff. But

"Old Humphrey" was not the kind of a man who would *stay crushed*. Years afterwards some of them regretted the mistake they had made.

In 1806, when Judge Coburn taunted Mr. Marshall with his vote for the Jay treaty, the old war-horse disposed of him with these few terse sentences in the *Kentucky Gazette* (Nov. 3, 1806):

* * * * That treaty has been executed these twenty years, had his *honor* but known it, and it has been found much more beneficial than otherwise. It preserved peace with England, and kept us out of the arms of France; these were two good things. It defeated the schemes of the *Spanish Associates*—that was a third good thing. It enabled the Government of the United States to obtain from Spain the right of navigation and deposit on the Mississippi—that was a fourth good thing. It gave the United States the possession of the northwestern posts—that was a fifth good thing. It gave the command of the Northwest Territory to the United States—that was a sixth good thing. It gave us peace with the Indians—that was a seventh good thing. I thought it right to ratify it, therefore I voted for it. Now it is a good thing to have a man in office who, upon such occasions, will vote according to his judgment. * * * *

Notwithstanding all these good things contemplated and accomplished by the Jay treaty, certain men made it the pretext of inciting a mob, upon one occasion, to drag Mr. Marshall from his home at night with the avowed intention of ducking him in the Kentucky river, hard by.* It may well be imagined that people who could be incited to mob a United States Senator for a vote like Mr. Marshall's on the Jay treaty, were mentally incapable of determining whether that vote, or any other, was good or bad; and the conviction is unavoidable that they were mere puppets neither knowing nor caring whether the vote was good or bad, but perfectly willing to carry out the purposes of the men who had incited them to the performance of the outrage. The incident of the mob is strong proof of what Mr. Marshall always charged; namely: that he was the victim of a cabal bent upon his humiliation and destruction, by whatever means.

But even this humiliation was not fully consummated. Arriving at the brink of the river, the United States Senator called a halt; and with

* Warfield.

inimitable humor, coolness and courage, said, in substance: "My friends, all this is irregular. In the ordinance of immersion as practiced in the good old Baptist Church, it is the rule to require the candidate to relate his experience before his baptism is performed. Now, in accordance with established rules and precedents, I desire to give in my experience before you proceed to my immersion."

Such an appeal, coming from such a man, tickled the humor of the mob, and he was placed upon a convenient stump and ordered to relate his experience. Proceeding first in a way to humor the mob, the Senator finally warmed to his work, and with all the pent-up indignation of a man who felt that he was approaching the culmination of a long series of outrages and injustices, he fairly blistered the miscreants with the well-timed fury of his scathing tongue, until one by one they sneaked away shamefacedly and left him the triumphant master of the field.

This outrage, of course, was degrading only to the weak and foolish, if not vicious, men who engaged in it. It is now remembered only to Mr. Marshall's credit. But he was twitted and taunted with it for many years. In 1806, a dozen years afterwards, Mr. Thomas Bodley, in a letter to the *Kentucky Gazette* (Sep. 4) under the name "*Independence*," speaking of Humphrey Marshall, says:

* * * * Has he *forgot* when he was a member of the Virginia Convention, and abused the trust reposed in him by violating his promise and voting contrary to the known will of his constituents? Can he have forgotten how he deceived his country while a Senator of the United States by voting in favour of the ratification of the British treaty? (But no doubt he had powerful reasons for this). What did he receive for this vote? Was he not afterwards led to the river in Frankfort to be ducked? What was the *experience* he gave in? Was he not stoned out of town with the *Rogue's March* beating after him? Was he not burnt in effigy? * * * *

To this Mr. Marshall effectively replied in the *Gazette* of October 16, 1806, as follows:

* * * * If I am to be upbraided with follies, vices, or crimes, at least let it be said that they were my own—do not attempt to lay to my charge and to put upon me those of the *Spanish Associates*, of their *minions*, or of the *poor, ignorant* beings who were collected on the bank of the river by Frankfort for

*manuscript
edited*

the *very honorable* purpose of ducking me for giving an independent opinion. Among this *patriotic group* old John Byrnes, the drunken butcher, was one of the most respectable. The two ring-leaders, to do Mr. Bodley justice, have by their vices and follies sunk themselves rather below his standard—I mean Baker Ewing and Hayden Edwards. They, I am informed, have fled the country. The rest I shall leave to inscribe their own names on the *column of fame*, where I hope they will reserve a place for Mr. Bodley; and where, if he pleases, he may take with him the torch with which he lighted the effigy of which he informs me for the first time. There is, however, one act of justice which I owe to those *deluded strangers* who had been assembled in order to do me violence; NOT ONE OF THEM, however urged, PUT THE WEIGHT OF HIS HAND ON ME; while the others, *most respectable citizens of Frankfort and its vicinity*, had too much *magnanimity* to execute the *patriotic ordeal*, as they had intended, *upon a Senator of the United States* for doing his duty BY GIVING AN INDEPENDENT VOTE!

The *experience* was that of a man who, believing himself greatly outraged, knew how to sustain his firmness in the midst of a mob. It is true stones were thrown, and it might have been to the tune of the *Rogue's March*—for such action the tune was well-chosen, and Mr. Bodley is welcome to the full credit of both. * * * *



His Character Attacked by the Legislature.

Humphrey Marshall's opponents were relentless and untiring. After having him denounced by public meetings, burned in effigy, mobbed, and run away by violence from the hustings when he attempted to justify his course, they were still not satisfied. He was "boycotted" to the extent that his friends deserted him, and few were bold enough to speak a word in his behalf. But after all this he was still undaunted and defiant, and fought back with all the force he could command, and fought so well that his enemies hated him worse than ever.

About this time George Muter and Benjamin Sebastian, Judges of the Kentucky Supreme Court, issued a pamphlet charging that Humphrey Marshall had committed perjury in giving his evidence in a suit pending before them between himself and James Wilkinson. This pamphlet probably is not now extant.

The files of the *Kentucky Gazette* preserved in the Lexington Library show the following card in the issue for October 9, 1795; viz:

To the Honorable George Muter and Benjamin Sebastian:

Having notified you in a pamphlet addressed to you in answer to one written by yourselves that if you would be more specific in certain charges therein alleged against me that they should be answered, I did expect that you would have exhibited those charges specifically—stating particularly the fact or facts on which they were founded, and the testimony in each particular case. This not yet having been done, nor, as far as I know, intended to be done, by you, I take this method to call on you. And I require of you *to exhibit under your signatures* the facts and evidence (since if there be any they are in your possession) in which those charges against me personally are founded, that I may know how to meet them and to defend myself against them; thinking it improper to take any further notice of them in their present shape, though the malice of my enemies, sanctioned by your authority, should continue to reverberate them against me. If you have any sense of justice remaining you will comply with this request; otherwise you must be content to receive the imputation due to the vilest calumniators.

I desire to have those charges brought forward in the manner above-stated before the first of next month, at which time I shall leave this State on business.

Mr. Bradford is requested to give this a weekly publication in his paper until the 1st of November, unless I shall be sooner notified that your honors will comply with this call.

And I further notify those who may feel themselves affected, that I mean to expose to the public view the *decree* of the Court, and the *points* upon which it was given, between Gen. Wilkinson and myself.

I am, gentlemen,

Your very humble serv't,

H. MARSHALL.

It appears that Judges Muter and Sebastian replied to this card, and they doubtless complied with its requests, but the paper containing their reply is missing from the files of the *Gazette*. Mr. Marshall being about to set out for Philadelphia, where the Congress of the United States then sat, proposed an arbitration as the quickest and best way of settling the matter, as will be seen from the following communication in the *Gazette* of October 23d, 1795:

To the Honorables Geo. Muter and Benj'n. Sebastian, now at Frankfort:

In reply to your note in Mr. Bradford's paper of Saturday last, I can, with the utmost frankness and sincerity, assure your honours that your assertion of me is *not true* and cannot be justified—and anxious to have the matter

between us, thus brought to issue, determined before I leave the country—*which cannot possibly be done by suit*, I propose that it be left to twelve of the most respectable citizens of Woodford county, in which one of your honours resides. That the persons be named by us reciprocally—that you specify your charge in writing, with the facts on which you found it, and transmit a copy to me; that I will answer in writing; upon which and the depositions and other exhibits in the case between Gen. Wilkinson and myself, let the question between us be settled. This will be coming to the point in a fair and speedy manner—and a decision so obtained will be equally as valid as the verdict of a jury. To facilitate the object of this proposition, I will now name six persons on my part; to-wit: Peyton Short, John Watkins, William Steele, Robert Alexander, John Finney and Marquis Calmes. Gentlemen, you can name as many more, and a joint request for their attendance at Woodford Court-house on some day in the first week in November next (which you may insert in the request to be sent to the persons named) and I will charge myself with having it presented, if you will enclose it to me in the answer which I shall expect to this application. The originals of all the papers in the case above alluded to are in the office of your court; consequently, now immediately accessible to you; and I have copies of almost all of them, of which I will forthwith furnish you a list. Should you want others, you can easily procure them, to be used on the trial. Nor shall the expense be an objection—I will pay that if you come into the proposal, and request it.

Your honours' humble Servant,

H. MARSHALL.

This proposition, than which it appears nothing could have been fairer, was not accepted. Nor did the honorable Judges have Mr. Marshall indicted for perjury, as it was clearly their duty to do if they believed what they charged. He was too wise to bring suit in court, where a jury might easily have been packed against him. But the Legislature of Kentucky was supposed to be clearly unfavorable to Mr. Marshall, being composed largely of his political opponents, and the fight against him was renewed in that body, as may be seen by the following extracts:

FROM THE JOURNAL OF THE HOUSE OF REPRESENTATIVES, 1795.

Saturday, Nov. 21, 1795.—On motion, *resolved*, that a committee ought to be appointed to draught a memorial to Congress, setting forth that Humphrey Marshall, one of our Senators from this State, has been publicly charged with being guilty of perjury, and request that an investigation be made on the subject; and that if the fact is sufficiently proved, he ought to be expelled

from the Senate. And a committee was appointed of Messrs. Young, Thomas, Davis, Jouette and Calmes.

Dec. 16, 1795.—The address to the Senate of the United States concerning certain charges that have been exhibited against Humphrey Marshall, respecting his being guilty of perjury, was taken up, read, and then agreed to by the House, as follows, viz. :

To the Senate of the United States:

"The representatives of the freemen of Kentucky, in general assembly met, feel themselves bound by every tie of honor and patriotism to represent to you the following facts and reflections—

"In the month of February, 1795, not long after the election of Humphrey Marshall, one of the Senators of this State in the Congress of the United States, a pamphlet was published by George Muter and Benjamin Sebastian, two of the Judges of the Court of Appeals of this State, in which they say that 'Humphrey Marshall had a suit in chancery in the Court of Appeals, in which it appearing manifest from the oath of the complainant, from disinterested testimony, from records, from documents furnished by himself, and from the contradictions contained in his own answer, that he had committed a gross fraud, the Court gave a decree against him; and though in the course of the investigation, he was publicly charged with being guilty of willful and corrupt perjury in order to screen himself from the consequences of his fraud; yet so conscious was he of guilt, that he has never since dared by way of suit, or any other mode, to bring forward an examination into the truth of the charges. Indeed, callous as he is, he appeared at the time to be so fully convicted that he scarcely had effrontery enough to deny it.'

"Though this passage evidently contains in effect a charge that Humphrey Marshall was guilty not only of fraud, but perjury; yet he appears in his pamphlet, published at Philadelphia, as alluded to in his publication in the *Kentucky Gazette*, and in that publication on the day of , 1795, to think the expressions too vague, and calls for a specification of the charge. To this demand George Muter and Benjamin Sebastian replied that he was guilty of perjury in his answer to the bill in chancery exhibited against him by James Wilkinson, and pledge themselves that they will plead a justification to any suit brought against them therefor. No such suit, as we believe, or that we can learn, has been brought.

"Our duty under these circumstances strongly and unequivocally requires that we should request your serious attention to the considerations which this case suggests—important indeed it is to society, that those intrusted with the exercise of the powers of government, should be men of unshaken virtue and integrity. Without these qualities in vain shall they require the confidence

of the people, when the basis on which that confidence alone can be founded, is wanting, the superstructure must totter, must fall. But it is further to be observed that they should not only be virtuous, but free even from the imputations of crime; more especially of those infamous crimes, the perpetration of which destroys the bonds of society, prostrates the obligations of truth, morality and religion, and violates the human criterion of truth and falsehood—the sole support of well-grounded confidence. It has been observed that small is the distance between a disregard of reputation and the loss of virtue—perhaps it may more justly be said that the latter ever precedes the former, often are men of no virtue desirous to possess its good fame; but a disregard of reputation is to be found only in the most abandoned of mankind. In these reflections we feel our own situation implicated: the character of the Senator may involve the reputation of the State which he represents; nor does the situation of Humphrey Marshall, charged as he is, with an infamous crime, affect only himself and the State from which he is deputed; it is highly interesting to the honor, dignity and consideration of the highly intrusted body of which he is a member.

"We mean not to give an opinion on the justice of the charge which has been made against Humphrey Marshall. It has been made, and is of such a nature as must render him unworthy, if true, of any, still more so of the highest trust. While it is unexamined, untried and undecided, doubts will exist—those doubts cannot but have the worst effects on the public mind. The case calls aloud for your most serious attention, and we request you by everything dear and honorable not to disregard the united voice of reputation, virtue and patriotism. To your wisdom and justice we confide, that the character of Humphrey Marshall shall be purged of the charge, or your house of his presence.

"We therefore conclude with requesting that an investigation may immediately take place, relative to the charges stated; and if Humphrey Marshall can evince his innocence, that such exculpation may be promulgated throughout the United States, that himself, as well as our State, may be exonerated from the imputation of such a crime. But if the charges can be fixed upon him that he may be expelled from a seat in your house."

On motion of Mr. Merriwether, seconded by Mr. Jouette, the yeas and nays were ordered to be taken on the said address. Those who voted in the affirmative are Messrs. Abell, Adams, Blane, Bryan, Casey, Davis, Estill, Garrard, Gregg, Jouette, Parker, Pittman, Rowan, Rawlings, J. Smith, C. Smith, Walker and Young. And those who voted in the negative are Messrs. Calmes, Crist, Caldwell, Furman, Grant, Hughes, Hodgens, Logan, Merriwether, M'Dowell, Pawling, Pickett and Wells. Yeas, 19; nays, 13.

The statement that Mr. Marshall had made no denial of the charges

of perjury and fraud brought against him by Judges Muter and Sebastian, was not true. When the charges were first made Mr. Marshall was in Philadelphia attending to his duties as a Senator in Congress. While at Philadelphia he did write and publish a pamphlet denying and disproving the charges.

The Legislature, in its memorial to the United States Senate, states that Mr. Marshall had brought no suit against the men who had charged him with fraud and perjury, but neglected to mention the fair and reasonable proposal of arbitration which he had then recently made to his assailants. It appears to have been impossible for men to be simply just to Humphrey Marshall. And this writer can not refrain from saying here that Judge Benjamin Sebastian, then a traitor in the pay of Spain, standing pledged to betray his country into the hands of His Catholic Majesty, convenient upon demand, was indeed a proper person to hound and humiliate in every conceivable way and by all manner of vile charges, an honest man, whose only crime was that he had tried to do his duty by his people and his country honestly, faithfully and conscientiously.

The memorial of the Kentucky Legislature was actually forwarded to the United States Senate; and the action taken upon it by that body may be seen by the following extract taken from the journal of the Senate, to-wit:

Senate of the United States, March 22, 1796. In the case of the Kentucky Memorialists exhibiting certain allegations against Humphrey Marshall, a Senator from that State:

On the question to adopt the report as amended, it passed in the affirmative; yeas, 16; nays, 8. The yeas and nays being required by one-fifth of the Senators present.

Those who voted in the affirmative are Messrs. Bingham, Bradford, Cabot, Foster, Freylinghuysen, Gunn, Latimer, Livermore, Payne, Reed, Ross, Rutherford, Strong, Trumbull and Vining.

Those who voted in the negative are Messrs. Bloodworth, Brown, Burr, Landon, Martin, Mason, Robinson and Tazewell.

So the report was adopted as follows:

The Committee to whom were referred the letter of the Governor and the memorial of the Representatives of Kentucky, with the papers accompanying them, report:

That the representatives of the freemen of Kentucky state in their memorial that in February, 1795, a pamphlet was published by George Muter and Benjamin Sebastian (who were two Judges of the Court of Appeals) in which they say that Humphrey Marshall had a suit in chancery in the said Court of Appeals, in which it appearing manifest from the oath of the complainant, from disinterested testimony, from records, from documents furnished by himself, and from the contradictions contained in his own answer, that he had committed a gross fraud, the Court gave a decree against him; and that in the course of the investigation he was publicly charged with perjury. That Mr. Marshall, in a publication in the *Kentucky Gazette*, called for a specification of the charge. To which the said George Muter and Benjamin Sebastian, in a like publication, replied that he was guilty of perjury in his answer to the bill in chancery exhibited against him by James Wilkinson, and that they would plead justification to any suit brought against them therefor. That no such suit, so far as the Representatives could learn, had been brought. The said Representatives further say that they do not mean to give an opinion on the justice of the said charge; but request that an investigation may immediately take place in relation thereto.

Your Committee observe that the said suit was tried eighteen months before Mr. Marshall was chosen a member of the Senate; and that previous to his election mutual accusations had taken place between him and the Judges of the said Court, relating to the same suit.

The Representatives of Kentucky have not furnished any copy of Mr. Marshall's answer on oath; nor have they stated any part of the testimony, or produced any of the said records or documents, or the copy of any paper in the cause, nor have they intimated a design to bring forward these or other proofs.

Your Committee are informed by the other Senator and two Representatives in Congress from Kentucky that they have not yet been requested by the Legislature of that State to prosecute this inquiry, and that they are not possessed of any evidence in the case, and that they believe no person is authorized to appear on behalf of the Legislature.

Mr. Marshall is solicitous that a full investigation of the subject should take place in the Senate, and urges the principle that consent takes away error, as applying on this occasion, to give the Senate jurisdiction; but as no person appears to prosecute, and as there is no evidence adduced to the Senate, nor even a specific charge, the Committee think any further inquiry by the Senate would be improper. If there were no objections of this sort the Committee would still be of opinion that the memorial could not be sustained. They think that in a case of this kind no person can be held to answer for an infamous crime unless on a presentment or an indictment of a grand jury, and that in all such prosecutions the accused ought to be tried by

an impartial jury of the State and district wherein the crime shall have been committed. If, in the present case, the party has been guilty in the manner suggested, no reason has been alleged by the memorialists why he has not long since been tried in the State and district where he committed the offense. Until he is legally convicted the principles of the Constitution and of the common law concur in presuming that he is innocent. And the Committee are compelled by a sense of justice to declare that, in their opinion, this presumption in favor of Mr. Marshall is not diminished by recriminating publications which manifest strong resentment against him.

And they are also of opinion that as the Constitution does not give jurisdiction to the Senate, the consent of the party can not give it; and that, therefore, the said memorial ought to be dismissed.

On motion, *Resolved*, that the Vice President of the United States be requested to transmit a copy of the foregoing report to the Governor of Kentucky.

Thus did this assault upon Mr. Marshall's character receive its quietus. If Judges Muter and Sebastian had confidence in the truth of their charges, nothing appears more reasonable than the supposition that they would have procured an indictment against Mr. Marshall; or else would have accepted his offer to have the matter arbitrated by twelve good citizens of Woodford county. Taking into account the course of the accusers, their charges appear to have been a deliberately planned persecution.

Hon. John Brown was Mr. Marshall's colleague in the Senate, and although he stated to the Senate Committee to whom the matter was referred, that he was not authorized to prosecute the charges, that he believed that no one else had been, and that neither he nor any other person, so far as he knew, had been furnished with evidence upon which to prosecute the charges—in spite of all this—he voted against the report of the Committee dismissing the memorial. Yet we have the statement of William Littell that in 1793, only three years before, Mr. Marshall, then a member of the Legislature, had voted for Mr. Brown for Senator in Congress.

Mr. Marshall served in the United States Senate until the expiration of his term in 1801, and then retired to private life, politically dead for the time. His course in the Senate has been amply vindicated by subse-

quent history, although it was bitterly denounced at the time. In his history of Kentucky he takes occasion to justify his support of the Alien and Sedition laws. And it may be said in passing that in view of the gathering force of communism and anarchism in some of our American cities at this time, forces which work in secret and culminate in dynamite, even Alien and Sedition laws and the power they gave to the President, might not seem so terrible as they once did if they could be enforced *now*.

Humphrey Marshall, retired perforce to his farm and to his law office, appears but slightly in the public affairs of the times for a few years after 1801. He bided his time in silence, awaiting the day he knew must come when other hearts would be made to bleed. And come it did in the year 1806.



The Exposure of the Spanish Intrigue.

In the year 1806, John Wood and Joseph M. Street came from Richmond, Virginia, and established in Frankfort a newspaper which they called "The Western World." Its initial number created a sensation in Kentucky, for it contained the first installment of what purported to be an exposure of the French, Spanish, and other intrigues which had vexed the settlers on the western waters for more than twenty years. The following extract from the first number of the *Western World* will give an idea of the character of the alleged exposure:

* * * * Thus was the State of Kentucky set up for sale, and to be courted and intrigued for by two European powers. Gardoque, the Spanish Minister at Philadelphia, was applied to for that purpose by the King of Spain; while Lord Dorchester, the Governor of Canada, was informed with a similar view by the Ministry of Great Britain. A copy of Wilkinson's report* was transmitted to Lord Dorchester, which is probably yet in Lord Dorchester's possession; but another manuscript is preserved in the private library of the Earl of Bute, at his family seat of Mt. Stuart, in Scotland.

1st. With regard to the Spanish negotiation, Gardoque commenced his operations by sounding John Brown, member of Congress from Kentucky,

* Perhaps this report was the "Desultory Reflections by a gentleman of Kentucky."

then in Philadelphia, on the subject. Having discovered in Mr. Brown an accommodating disposition toward the Spanish Government, he directly made proposals for a separation of the State of Kentucky from the United States, in favor of Spain, on the following conditions; with an assurance to Mr. Brown, if they were carried into effect, he himself should be raised to the position of a Spanish Grandee, with a suitable pension for life.

1st. That the citizens would be allowed the privilege of their laws, and no restraint placed on them in respect to religious matters.

2d. That the navigation of the Mississippi would be equally free to the Kentuckians as to the other subjects of Spain.

3d. That in all other matters the Kentuckians would remain on the same footing with the Louisianians.

Whether these terms were complied with on the part of Mr. Brown, we know not; but they are narrated in a letter written at that period by Mr. Brown to Hon. Samuel McDowell, of Jessamine county, one of the Circuit Judges of the State. Mr. Brown was then said to be on the point of marriage with Mr. McDowell's daughter; and it is very natural to suppose he should embrace the first opportunity of informing his intended father-in-law of the honours which were to be conferred upon him at the Spanish Court.

Part of this scheme is also mentioned in another letter written by Mr. Brown, about the same time, to Judge Muter, the present President of the Kentucky Court of Appeals. This letter, being obtained in some way from Judge Muter, was published about 1789, in the *Kentucky Gazette*; but only one copy of that paper, we believe, is at this day in existence.* It is in the possession of Col. Bullitt, of Jefferson county. So careful were the members of this Association to have every document which gave light upon their transactions destroyed. * * * *

The letter to Judge Muter, referred to, has already been reproduced in this sketch. Judge McDowell denied having received any such letter from Mr. Brown as was charged by the *Western World*, but admitted the receipt of a letter from that gentleman which he stated was, in substance, about the same as the letter which Judge Muter received from Mr. Brown. This statement he made from memory, as the letter had (in 1806) been lost about ten years, as he said. Both Judge Muter and Judge McDowell, in the heated controversies which attended the *Western World* publications, printed cards in behalf of Mr. Brown in which they did all they could, in that way, to clear and exonerate him from the charges brought against him by the *World*.

* It is missing from the *Gazette* file in the Lexington Library.

The *Western World* continued its "exposure" articles through many numbers, and the circulation of the paper at once went up to a figure which had hitherto been unknown in newspaper subscriptions in Kentucky. The publishers boasted of having "more than a thousand subscribers." Their "sensation" increased with its continued agitation, and finally culminated in the exposure and disgrace of Judge Sebastian, of the Court of Appeals, who tacitly admitted that he had for years been a pensioner of Spain. The names of other prominent Kentuckians, such as Judge Harry Innes, Col. George Nicholas, and Senator John Brown, were given an unenviable notoriety and implication in these publications. The *Western World* was largely instrumental in the exposure of Aaron Burr's treasonable schemes, also; and led to his *quasi* trial at Frankfort by Col. Joseph Hamilton Daveiss, the United States Attorney for the District of Kentucky.

At the beginning of the publication of the *Western World*, it is almost certain that Humphrey Marshall had little or nothing to do with the paper; but it is equally certain that he was afterwards drawn into the discussions by being assaulted himself in the prints of the day; and it is a reasonable presumption—nay, almost an absolute certainty—that he furnished a great part of the thunder with which Wood & Street made the Kentucky welkin ring. The *World* was hardly started before a writer in the *Kentucky Gazette* made the following slash—one of innumerable others of its kind—at Humphrey Marshall:

Can Wood be anything more than the puppet of a principal juggler, who, sitting behind the curtain *demon-like*, to obtain revenge of men whose firmness and integrity on former occasions put him off the political stage and consigned him to private life? Why do not men who have proof of the fact in their possession, drag him from his den, and put him into public view in all his native colors?

Mr. Marshall, at this time, had many land suits pending before the Court of Appeals, two of the Judges of which were openly charged with complicity in the Spanish intrigue. Marshall had been forced into newspaper controversies during this time with Judge Coburn, Thomas Bodley, and others—and in these controversies he signed his name to his articles. Therefore, much diplomacy was used by his opponents to force

him to use language toward those Judges which might prejudice them in their decisions in his land suits. The man was assailed in every conceivable way, and no method by which he might be tortured, annoyed or injured, was omitted. Like a lion at bay, Humphrey Marshall met these movements at last in a letter to the *Kentucky Gazette* of Nov. 6, 1806. He says:

That I have some enemies, for causes originating with themselves, and who are unwilling to meet me on a correct statement of facts, or who, in the field of argument, would depress me by means of their tools, is what I well know, and what the public at least suspect. I can but feel the inequality of a contest between a private citizen and men in power who, surrounded by their minions, have ever detachments at command to defame their adversaries, or to eulogize themselves. The great body of the people, uninformed as to the real facts, know only what they hear, and often hear without any means of correctly judging. Therefore, frequent and bold assertion assumes the place of proof, without regard to the source whence it comes. * * * * My situation is almost without a precedent. I have dared to raise my voice, *as to some particulars*, against men who have my property at their disposal, and by a blow may annihilate my labours for twenty years. Did I not foresee this? Yes; and I would have avoided it, but I had duties to fulfill which, in my estimation, were paramount to pecuniary considerations as they successively presented themselves to my view. I have been forced into the conflict by circumstances and events over which I had no control. I have been brought to a point where it became necessary to submit to imputations and injustice in silence, or to speak at the risk of still greater outrage; and in these cases I have not long hesitated. The same determination will bear me through, whatever may be the result. I regret one thing; which is, that assailed as I am, I have replied in a tone of severity which may have the appearance of ill-nature to those who do not consider that I am perfectly on the defensive. * * * *

Humphrey Marshall's own account of the affairs of 1806, as given in his history of Kentucky, will be here reproduced, as it is both brief and interesting:

War with Spain, or Spanish authority in Mexico, bordering on the United States territory, seemed to be apprehended by many. The Floridas were also in commotion; the movements of Col. Burr were suspected; the whole of which may be considered as concurring causes of some uneasiness, hardly amounting to agitation of the public mind

in this country. Early in the season the name of General Wilkinson, who had left New Orleans about 1804, and was then at St. Louis, began to be connected with that of Col. Burr and others embarked in enterprises of a high, ambitious, military and political character, menacing both the territories of the United States and those of Spain with war and revolution. While the succession of the seasons still unrolled the scroll on which this mystery was inscribed * * * *

In the meantime John Wood and J. M. Street * * * * the first a professed man of letters; the other familiar with newspapers, and of "sterling mettle" and good capacity, as he afterwards approved himself, formed the project of publishing a weekly newspaper in Frankfort, to be styled "THE WESTERN WORLD." Professing *republicanism* they were encouraged, and by the 1st of July had their project ready for execution, by contract with *William Hunter*, proprietor of the "*Palladium*" establishment, and editor of a paper so called.

Wood had been in New York, was personally acquainted with Burr, knew of Miranda's enterprise, and possessed indications of that which was then generating in the Western States. With these scintillations of knowledge he had combined information, no less imperfect, which he had acquired in Kentucky relative to the intrigue of Wilkinson, Brown, Innes, &c., with the agents of Spain; and working these into a narrative, published it about the 4th of July, to the very great astonishment of the innocent part of its readers; and the no less consternation of some of the guilty—then in or about Frankfort—they being so named or described therein as to be known. These deny the imputations of *intriguers*, Spanish *conspirators*, &c.; their friends assert their innocence, their connexions menace the editors; and means how to destroy the establishment and prevent the publication of the paper, are ruminated with the most profound solicitude. The people are observed to take a deep interest in the subject, and to expect the promised disclosure with more than ordinary curiosity and anxiety. "*The Western World*" became the general topic and, of course, was read with avidity.

Another number appeared, in the character of the first, and existing impressions were deepened; society was agitated; and while Wood kept his closet, or evaded assault by his pusillanimity, Street met not only those who desired to know the truth, but those whose object it was to suppress it, with a firm and manly countenance. He was assaulted, and repelled the assailants. His life was in jeopardy, since it was perceived that nothing but his death could prevent an exposure of the guilty. Two of the most criminal, Sebastian and Innes, were then high in office. An assassination was attempted by George Adams, armed with two pistols, and repelled by Street with a dirk,

after receiving a wound on the breast by the discharge of one of these firearms. The flight of Adams, and consequent pursuit, were arrested by the interference of some of the citizens who had become witnesses of the scene. The parties were taken into custody, and bail required of them for appearance, &c. Mr. Adams found no difficulty in giving bail; with Mr. Street the case was very different. Everywhere repulsed by friends, lately professed, he looked to the jail as his next tenement; when meeting with Humphrey Marshall, hitherto a distant spectator and but a slight acquaintance, he found bail; in which it is believed that Col. J. H. Daveiss, then happening to be in Frankfort, joined; Marshall thereby reviving, and Daveiss incurring, the malignant resentment of the implicated Judges, &c. In due time the late combatants were tried, Street acquitted, and Adams found guilty, as was supposed, of a penitentiary crime. But, behold! the Attorney-General, who prosecuted for the Commonwealth, and who alleged the *shooting* in the indictment, had *very innocently, no doubt, and void of the least design*, being one of the opposers of the *Western World*, omitted to allege that "the shooting was with intent to kill." And so *the jury had not found Mr. Adams guilty of any crime*; when judgment was arrested, and the late accused discharged without further prosecution. Such are believed to have been the facts. Should any curious reader inquire, or one who may be dissatisfied reflect, why this was so, it is thought he may find a solution in the narrative itself; if not, then certainly in the grade of morals belonging to the public functionaries of the time, and in the divided state of public opinion, ever befriending crimes.

The *Western World* continued, however, to revolve upon its axis, and to acquire friends as it spread conviction.

A writer whose numbers were signed "AN OBSERVER,"* who appeared to be possessed of many facts relative to the *Spanish intrigue of earlier times*, as if yielding his confidence to the fortitude of Street, entered into the controversy; gave consistency to the narrative; elicited evidence, even from the implicated, which completely established the main facts as to the Kentuckians concerned; while he conciliated to the paper an immense support from public opinion, however prudish and coy, where those in power and popularity are attacked and exposed. But what matters public opinion in such cases, unless it can be brought to act in some efficient, organized form? Such progress had been made in the development of the Kentucky intrigue that it became an object to get it before the approaching session of the Legislature. To effect this, an address to that body was drawn up by "An Observer," stating in pretty

* This was Humphrey Marshall.

clear terms that Benjamin Sebastian, one of the Judges of the Court of Appeals, *was a pensioner of Spain*, and praying an inquiry. This was printed confidentially, having yet to encounter the opposition of Henry Clay, John Allin, and others who found their interest supported by it as attorney and politicians of the times. The efforts of these gentlemen were directed and exerted to prevent the intended Legislative inquiry.

When the address to the people was printed some of the copies were taken to Versailles and offered for subscription, where they were discountenanced by a few, but approved and signed by the independent farmers; taken into possession by William Blackburn, a member from the county, and by him, as it is believed, made known to the other members. The Court and its adherents, at that time a formidable phalanx, were not to be assailed, even in one of its members, without much risk in case of failure. What, however, had been expected, took place: measures being taken to bring the subject before the Legislature, where it might be fully and effectually investigated; several persons of respectability who had withheld the evidence which they possessed of the material facts, or had whispered them only in confidence, hence became more communicative, and it was soon ascertained that the receipt of a pension by Judge Sebastian could be proved by persons in no manner implicated in the transaction.

A resolution of inquiry was passed, and an investigating committee appointed, by the Legislature, with the following result, as stated in Marshall's History :

The case, thus presented, became exceedingly disagreeable, and even embarrassing, to some of the members, whose object was to evade the inquiry, but who did not possess assurance sufficient to oppose it by direct means. * * * *

After the Committee met and determined to send for witnesses. Sebastian and his friends, considering his detection unavoidable if the investigation could not be arrested, attempted first to obtain a postponement, under pretence of giving the Judge time to prepare for his defense; that failing, and knowing his guilt, in the next place, in order to screen others who would unavoidably be exposed, and who had also stood out "the patriots of their day," the Judge resigned his seat in the Court of Appeals; of which information was sent by the Governor to the Committee, who refused to take any notice of it, and proceeded.

Witnesses were sent for, and attended, among them Judge Innes, the coadjutor of Sebastian in the Spanish intrigue. He, being sworn, proceeded, under strong symptoms of perturbation and reluctance, to

disclose some account of the mission of Mr. Sebastian in 1795 to treat for the navigation of the Mississippi; already mentioned; connecting it with the Democratic Society and French intrigue, as if to enlarge his circle of worthies; but being much embarrassed, he obtained permission to withdraw, as it appeared he had no more to say. Either in the latter part of the same day, or in the course of the next, having in the meantime consulted several friends as to the propriety of disclosing the overture of 1797 to dismember the Union, also previously mentioned, and being advised to do so, as it was rendered nearly impossible that it should be much longer concealed—the Judge re-appeared before the Committee in an agony of distress, and suggested that he had something more to communicate. Due attention being rendered, he was desired to proceed. He began, but found himself so affected by his reflections and feelings that his respiration became oppressed and his voice nearly exhausted, when he was allowed to retire and reduce his deposition to writing. This being done, disclosed the transactions with Mr. Power; which, having been placed under their proper date, needs no further remark. * * * *

The effect of the explosion was indeed great, for the time; but no effort that could be made was omitted to reduce it, or to put down those who had been the moving cause of the examination which had thus stripped of its fraud and treachery a *faction* which had existed in the bosom of the State from the year 1788, and whose objects have already been exposed.

Judge Innes, the coadjutor of Sebastian, remained unmolested, and even uncensured by any expression of opinion on the part of any public functionary.



Innes vs. Marshall.

The suit of Judge Harry Innes against Humphrey Marshall was one of the most absorbing affairs of the times. The suit was brought by Judge Innes for damages for the alleged defamation of his character by Marshall in charges made by him against Innes in the *Western World*, and other public prints of the day. Marshall was quite sure that Judge Innes was as deeply implicated in the Spanish intrigue as Judge Sebastian had been; and, proceeding upon these premises, he made matters so warm for Judge Innes that his honor had no alternative but to bring suit against Marshall, which he did. He also brought a similar suit

against Joseph M. Street. This suit, which was tried first, was brought up in the Jessamine Circuit Court and resulted in a verdict, in 1811, for Innes, who was awarded \$750 damages; and Street's motion for a new trial was overruled. Mr. Street, in his deposition in the case of Innes vs. Marshall avers that judgment was given against him by the jury upon the promise of Henry Clay and Robert Wickliffe, Judge Innes's attorneys, that the damages would never be collected, if awarded, since their client was anxious only to vindicate his character. "And if they should be collected, said Mr. Wickliffe, in a dry, hard tone, and with much grimace, Humphrey Marshall is morally bound to pay it and not Street."* Henry Clay made a similar statement to the jury, and the verdict was brought in against Mr. Street, but no attempt was made then to collect the damages awarded.

The case against Marshall was carried to the Mercer Circuit Court, and a great deal of testimony in the way of depositions was taken by each party. The deposition of Joseph M. Street, already alluded to, is perhaps one of the most remarkable documents of the kind in existence, and gives a condensed, spicy and highly interesting history of the troubles of the times. His account of the efforts that were made by prominent men to suppress the *World's* exposures, by intimidation, bribery, &c., are quite startling. John Wood was early intimidated and afterwards bribed; but Street was of more sterling mettle; although he admits that he was once upon the very point of yielding his integrity to the seductive blandishments of Henry Clay, when they were inadvertently interrupted by Col. Jos. Hamilton Daveiss, whose appearance recalled Street to his sense of honor and enabled him to repel Mr. Clay's degrading overtures. The *Western World*, notwithstanding it accomplished wonders, did not long survive, and Mr. Street left Frankfort and went to Illinois. In 1814 he returned to Frankfort, and was applied to by Humphrey Marshall to make a deposition in Innes vs. Marshall; and upon being apprised of this fact, Judge Innes swore out a writ against Street for the payment of the \$750 damages assessed against him in the Jessamine Circuit Court in 1811 in Innes vs. Street. Mr. Street was unable to pay this and was cast into prison.

* Jos. M. Street's deposition.

The cause of Innes vs. Marshall, in the Mercer Circuit Court resulted in a "hung jury," the majority of whom were in favor of finding for the defendant. Marshall's History of Kentucky makes this mention of the matter ; viz :

Judge Innes, as he retained his office, is thought of sufficient importance to justify the mention of the fact, sued Humphrey Marshall for publishing of him "that he was a weak and partial judge, an enemy to his government, and one whom he ranked with a Sebastian, a Blount and an Arnold." And such was his reliance upon the countenance and support of party that it must be supposed he expected to get a vote in his favour. His damages were laid at many thousand dollars. A trial at length was had which occupied ten or twelve days and terminated in a divided jury ; in which it was understood that there were five for finding something for the Judge were it but a cent ; the others said, "No, not a cent." The case afterwards went off, each party paying his own cost.

As Mr. Marshall states, the suit was compromised, each party agreeing not again to write or publish anything against the other. This was in 1814. The first edition of Marshall's History of Kentucky containing much derogatory matter about Judge Innes, had appeared in 1812. In 1824 this history was revised and enlarged, and published in two volumes, in which very little if any new matter derogatory to Judge Innes was introduced. Mr. Marshall was not obliged, under the agreement, to suppress from future editions of his history matter which had already appeared in the edition of 1812.



The Truth About the Spanish Conspiracy.

There has been no effort made to give in this sketch any connected history of the British, Spanish and French intrigues which vexed the early settlers of Kentucky ; nor of the Burr conspiracy, which came to naught in 1806, although Humphrey Marshall, more than any other one man, was the means of frustrating them, one and all. The history of these matters, properly written, would be voluminous, and entirely without the scope of this little work. What is said herein about them is said with the view of showing the character and moral stamina of

Humphrey Marshall, as well as to explain the relations he bore to many of his most prominent contemporaries.

The truth about the Spanish conspiracy was not known until about twenty-five years ago, when the Legislature of Louisiana procured from the archives of Spain, at Madrid, copies of a great many documents relating to the Spanish domination of Louisiana. These copies are now preserved in the Louisiana archives, and are quoted freely by Hon. Charles Gayarre in his admirable history of that State, published in 1866.

To one who reads in his history of Kentucky Humphrey Marshall's account of the Spanish intrigue, the revelations made by the Spanish archives upon that subject appear almost like the fulfilment of prophecy. When we reflect that Humphrey Marshall wrote his account of the affair without any positive proof, but merely as the conclusions reached from his personal observation of men and affairs, we are lost in admiration of the man's wisdom, acumen and sagacity, when we see those conclusions upheld and approved almost in detail by the documents exhumed from the archives of Spain.

This is so remarkable that it is thought excusable to insert in this connection the somewhat lengthy but very interesting account of the matter contained in Hon. Z. F. Smith's recent history of Kentucky; which says:

It becomes here the imperative duty of the historian to turn back for almost a quarter of a century [From 1806] to the period when these foreign intrigues began first to agitate the sentiment of Kentucky, and to review them from an entirely different standpoint. So far, the testimonies introduced as to the proceedings and parties implicated, have been such as appeared from time to time in the discussions and investigations within our own State, where there could be no official records and proofs to remove the veil of mystery which so long hung over this romantic episode of history. Such official records were, of course, only in existence with the foreign authorities with whom the conspirators in Kentucky held communication. These records are mainly on file in the archives of Spain, at Madrid, and have become to us a revelation that clears up all mystery and doubt as to the formidable significance of the intrigues by which it was sought to sever the Union, by the divide of the Alleghany range.

Of the correspondence and papers between Wilkinson and his asso-

viates, and the Spanish authorities at New Orleans, Gayarre says in his "History of Louisiana under the Spanish Domination," that "Most of these dispatches, if not all, were originally in cipher; they are to be found at length, and in Spanish, in the archives of Spain. Copies, made in compliance with a resolution of the Legislature of the State of Louisiana, under the supervision of M. de Gayangos, a gentleman distinguished for his learning and literary works, and also under the direction of his excellency, Romulus Saunders, who was then the United States Minister at Madrid, are deposited in the office of the Secretary of State at Baton Rouge." Gayarre has most liberally quoted these documents from the latter official file, and presents to us, upon the pages of his history, an intensely interesting account of the intrigues, from their inception to the end.

In the letter of the 8th of January, 1788, from Miro, the Intendent of the province of Louisiana, to Valdes, Secretary of State for the Indies, at Madrid, his understanding of the relations of Gen. Wilkinson are expressed in the following extracts: "The delivering up of Kentucky unto his majesty's hands, which is the main object to which Wilkinson has promised to devote himself entirely, would forever constitute this province a rampart for the protection of New Spain. The Western people would no longer have any inducement to emigrate, if they were put in possession of a free trade with us. This is the reason why this privilege should be granted to only a few individuals having influence among them, as is suggested in Wilkinson's memorial; because, seeing the advantages bestowed upon a few individuals, they might be easily persuaded to acquire the like by becoming Spanish subjects."

On the 11th of April, 1788, Miro and Navarro, in a joint dispatch, informed the Spanish Cabinet that they had received a communication from Wilkinson, in cipher, from which the following is quoted: "I have collected much European and American news, and have made various observations for our political designs. It would take a volume to contain all I have to communicate to you; but I dispatch this letter with such haste, and its fate is so uncertain, that I hope you will excuse me for not saying more until the arrival of my boats; and in the meantime I hope you will content yourself with this assurance. *All my predictions are verifying themselves, and not a measure is taken on both sides of the mountains which does not conspire to favor ours.*"

In the archives is a letter of Wilkinson's, written from Kentucky to Miro and Navarro, of date May 15th, from which we quote: "*My dear and venerable Sirs:* I have for the second time the pleasure of addressing you, and I flatter myself that some time ago you received my first, which I sent by express in a pirogue with two oarsmen, and the answer to which

I am continually expecting. Major Isaac Dunn, the bearer of this dispatch, and an old military companion of mine, came to settle in these parts during my absence. Permit me to recommend him as one worthy of your entire confidence, and as a safe and sagacious man, acquainted with the political state of the American Union, and with the circumstances of this section of the country. On the first of January next, 1789, by mutual consent, this district will cease to be subjected to the jurisdiction of Virginia. A convention has been called already to form the constitution of this section of the country, and I am persuaded that no action on the part of Congress will ever induce this people to abandon the plan which they have adopted, although I have intelligence that Congress will, without doubt, recognize us as a Sovereign State.

"The convention of which I have spoken will meet in July. I will, in the meantime, inquire into the prevailing opinions, and shall be able to ascertain the sentiments of the members elected. When this is done, after having previously come to an understanding with two or three individuals, capable of assisting me, I shall disclose so much of our great scheme as may appear opportune, according to circumstances, and I have no doubt but that it will meet with a favorable reception; because, although I have been communicative with no more than two individuals, I have sounded many, and wherever it has seemed expedient to me to make known my answer to your memorial, it has caused the keenest satisfaction. Colonel Alexander Scott Bullitt, and Harry Innes, our Attorney-General, are the only individuals to whom I have entrusted our views, and, in case of any mishap befalling me before their accomplishment, you may, in perfect security, address yourselves to these gentlemen, whose political designs entirely agree with yours. Thus, as soon as the new government shall be organized and adopted by the people, they will proceed to elect a Governor, members of the Legislature, and other officers, and I doubt not they will name a political agent with power to treat of the affair with which we are engaged, and I think this will all be done by the month of March next.

"I do not anticipate any obstacle from Congress, because under the present Federal compact, that body can neither dispose of men nor money, and the new government, should it establish itself, will have to encounter difficulties which will keep it weak for three or four years, before the expiration of which I have good grounds to hope we shall have completed our negotiations, and shall have become too strong to be subjected by any force which may be sent against us. The only fears I have proceed from the policy which may prevail in your court. I am afraid of a change in the present ministry, and in the administration of Louisiana."

The impressions made on the mind of Miro by these dispatches are set forth in the following observations, which he forwarded to the Cabinet at Madrid, along with the letter of Wilkinson: "The flat-boats of Brigadier-General Wilkinson have just arrived with a cargo that cost seven thousand dollars in Kentucky, under the care of Major Dunn, who has delivered me the letter of which I forward the translation. It will make you acquainted with the State in which is the principal affair mentioned in my confidential dispatch, No. 13. The Major confirms all Wilkinson's assertions, and gives it out as certain that next year, after the meeting of the first assemblies in which Kentucky will act as an independent State, she will separate entirely from the Federal Union. He further declares that he has come to this conclusion from having heard it expressed in various conversations among the most distinguished citizens of the State, that the direction of the currents of the rivers which run in front of their dwellings, points clearly to the power with which they ought to ally themselves. The said Brigadier-General, in a private letter addressed to me, adds that he flatters himself with the prospect of being the delegate of his State to present to me the propositions which will be offered by his countrymen, and that he hopes to embrace me in April next.

"Although his candor, and the information I have sought from many who know him well, seem to assure us that he is working in good earnest, yet I am aware that his intention may be to enrich himself at our expense by inflating us with hopes and promises which he knows to be vain. Nevertheless, I have determined to humor him on this occasion. As you have seen, Wilkinson promised a volume of information when his flat-boats should come down. He has kept his word, and transmitted me various newspapers containing articles on the Mississippi, and a paper of his own, full of reflections on the new Federal Government, the establishments on the Ohio, and the navigation of the Mississippi."

Navarro, an able and gifted statesman, had preceded Miro as Intendant of Louisiana. On returning to Spain, in a last dispatch to Madrid, to be submitted as a memorial to the King, he seeks to portray, in strong colors, the situation in the province over which he had charge, and at the request of the Minister of the department for the Indies. He represented that Spain must apprehend imminent danger from the thirteen American colonies which had recently become free and independent and had assumed rank among the nations of the earth, under the appellation of the United States of America. He dwelt with marked emphasis on the ambition and thirst of conquest which his keen eye could detect in the breast of the new-born giant, who, as he predicted

with prophetic accuracy, would not rest satisfied until he had stretched his domains across the continent and bathed his vigorous young limbs in the placid waves of the Pacific. This ominous and dreaded event was only to be prevented by severing the Atlantic States from the boundless West, where so much power was only slumbering in the lap of the wilderness. To do this, Spain must grant every sort of commercial privileges to the masses in the Western region, *and shower pensions and honors on their leaders*. This memorial produced a powerful impression at Madrid, and confirmed the Government of Spain in the policy already begun.

On the 3rd of November, 1788, Miro wrote to Minister Valdes, at Madrid, as follows: "This affair proceeds more rapidly than I had presumed, and some considerable impetus is given to it by the answer of Congress to the application of Kentucky to be admitted to the Union as an Independent State. That answer is, that the new Federal Government, which is soon to go into operation, will take their wishes into consideration, and will act thereon." This information Don Diego Gardoqui must have communicated, but he did not what follows:

"Oliver Pollock, a citizen of Philadelphia who arrived here three days ago in a vessel from Martinique, has declared to me that Brown, a member of Congress, who is a man of property in Kentucky, told him in confidence that in the debates of that body on the question of the independence of that Territory, he saw clearly the intention of his colleagues was that Kentucky should remain under the jurisdiction of Congress, like the county of Illinois, and that a Governor should be appointed by them for that province, as for the other; but that, as this was opposed to the welfare of the inhabitants of Kentucky, he was determined to return home (which he did before Pollock's departure from Philadelphia) and, on his arrival, to call for a general assembly of his fellow-citizens, in order to proceed immediately to declare themselves independent, and to propose to Spain the opening of a commercial intercourse, with reciprocal advantages; and that, to accomplish this object, he would send to Pollock the necessary documents, to be laid before me, and to be forwarded to your excellency. He requested Pollock to prepare me for it in anticipation.

"Your excellency will therefore rest assured that Brown, on his arrival in Kentucky, finding Wilkinson and his associates disposed to surrender themselves up to Spain, or at least to put themselves under her protection, will easily join them; and it is probable, as Wilkinson has already foretold it, that next spring I shall have to receive here a deputation appointed in due form.

"I acted toward Pollock with a great deal of caution, and answered

him as one to whom had been communicated some new and unlooked-for information, giving him to understand that I could not pledge to him my support before seeing the documents which he expected."

On the 12th of February, 1789, Wilkinson again wrote at length to Gov. Miro, asserting that he had, at that time, disclosed himself fully only to Innes and Col. Bullitt; and having since made a stricter inquiry, discovered that the proposed new government of the United States had inspired some with apprehension, and others with hopes in which he foresaw some probable cause of opposition and delay. All idea of Kentucky subjecting herself to Spain must be abandoned for the present; the only feasible plan now was to effect a separation from the Union and an alliance with Spain, on terms to be negotiated. He had brought this question of separation before the people with earnestness and adroitness, speaking of it in general terms as having been recommended by eminent politicians of the Atlantic coast, with whom he had conversed on the affair; and thus, by indirect suggestions and arguments, he had inspired the people with his own views, without urging them as original with himself. He found all the men of the first class of society in the district, with the exception of Marshall and Muter, decidedly in favor of separation, and afterwards for an alliance with Spain. At first, these two objectors had expressed the same sentiments for separation, but their feelings had taken a different direction, from private motives of interest and from personal pique. He then determined to bring the question into the convention. From the same letter we quote:

"I was then occupied until the 28th of July, on which day our convention met at Danville, in conformity with the ordinance you saw in the *Gazette* which I sent you by Major Dunn. The Honorable Samuel McDowell, president of the convention, had the day before received a packet from the Secretary of Congress, containing an account of the proceedings of that body on the subject which excited our solicitude—that is, our intended separation from the State of Virginia.

"You will remember that in my memorial I was of opinion that the Atlantic States would not consent to the admission of this district into the Union as an independent State; but on my return from New Orleans I was induced to alter my opinion, from information which I received from persons of the highest authority; and under that new impression I wrote you by Major Dunn. Thus we were not prepared for an unexpected event, of which we could have received no premonition. You will at first sight discover, on perusing the aforesaid paper No. 1, that this act of Congress was passed with the intention to gain time, amuse and deceive the people of this district, and make them believe that they could rely on the good dispositions of the Atlantic States, until the

formation of the new government, when our opponents flatter themselves it will be able to check our designs. Unfortunately, this artifice produced but too much effect on the members of this convention, and confirmed the apprehensions of others.

"From this proceeding of Congress it resulted that the convention was of opinion that our proposed independence and separation from Virginia not being ratified, its mission and powers were at an end, and we found ourselves in the alternative either of proceeding to declare our independence, or of waiting according to the recommendation of Congress. This was the state of affairs when the Hon. Caleb Wallace, one of our Supreme Judges, the Attorney-General, Innes, and Benjamin Sebastian, proposed a prompt separation from the American Union, and advocated with intrepidity the necessity of the measure. The artifice of Congress was exposed, its proceedings reprobated, the consequences of depending on a body whose interests were opposed to ours were depicted in the most vivid colors, and the strongest motives were set forth to justify the separation.

"Nevertheless, sir, when the question was finally taken, fear and folly prevailed against reason and judgment. It was thought safer and more convenient to adhere to the recommendation of Congress, and, in consequence, it was decided that the people be advised to elect a new convention, which should meet in the month of November, in conformity with the ordinances which you will find in the *Gazette* No. 2.

"Some of my friends urged me to avail myself of this opportunity to revive the great question, but I thought it more judicious to indulge those who, for the moment, wish only that a new application be made for the independence and separation of Kentucky from Virginia, and that a memorial be made to Congress on the necessity of obtaining the free use of the navigation of the Mississippi. I assented to these last propositions the more readily that it was unanimously resolved that, should any of them be rejected, then the people would be invited to adopt all the measures necessary to secure for themselves a separate government from that of the United States, because it would have become evident that Congress had neither the will nor the power to satisfy their hopes. I determined, therefore, to wait for the effects which will result from the disappointment of those hopes, and on which I rely to unite the country into one opinion. This is the basis on which the great question now rests, and the convention has adjourned to the next month.

"Thus, sir, if we review the policy favored by the inhabitants of Kentucky, we see that the most intelligent and the wealthiest relish our designs, which are opposed by only two men of rank, who, controlled by their fear of silly demagogues, and filling their followers with hopes

from the expected action of the new Congress, have caused the suspension of the measures we had in view to unite the people, and thus to secure the success of our plans without involving the country in violent civil commotions.

"There are three conditions which are requisite to perpetuate the connection of this section of the country with the Atlantic States. The first and most important is the navigation of the Mississippi; the second, which is of equal consequence, is the admission of this district into the Union as an independent State, and on the same footing with the others; the third, which is of less moment, is the exemption from taxes until the befalling of the two events previously mentioned. Now, sir, as two of these conditions are inadmissible, either by the Atlantic States or by Spain, can any one hesitate to declare what will be the consequences? With due deference, I say, no; because, as it was not rational to suppose the voluntary casting away of property that another may profit by it, so it is not to be presumed that the Eastern States, which at present have the balance of power in their favor in the American government, will consent to strip themselves of this advantage, and increase the weight of the Southern States, by acknowledging the independence of this district, and admitting it to be a member of the Federal Union. That the people of Kentucky, as soon as they are certain of being refused what they claim, will separate from the United States, is proclaimed even by Marshall and Muter, and their more timid followers.

"But, sir, should unforeseen events produce results contrary to my wishes, to my logical deductions, and to my hopes, should an obstinate resistance to forming a connection with Spain, or should an unexpectedly hostile disposition manifest itself in the settlements, then the true policy would be to make of emigration the principal object to be obtained, and Spain would always have the power, through some agents of an eminent rank here, to draw to her the most respectable portion of the population of this district. Hundreds have applied to me on this subject, who are determined to follow my example, and I do not deceive myself, nor do I deceive you, sir, when I affirm that it is in my power to lead a large body of the most opulent and most respectable of my fellow-citizens whither I shall go myself at their head; and I flatter myself that after the dangers I have run and the sacrifices which I have made, after putting my honor and my life in your hands, you can have no doubt of my favorable dispositions toward the interests of His Catholic Majesty, as long as my poor services shall be necessary.

"After having read these remarks you will be surprised at being informed that lately I have, jointly with several gentlemen of this country, applied to Don Diego Gardoqui for a concession of land, in order

to form a settlement upon the river Yazoo. The motive of this application is to procure a place of refuge for myself and my adherents, in case it should become necessary for us to retire from this country, in order to avoid the resentment of Congress. It is true that there is not, so far, the slightest appearance of it, but it is judicious to provide for all possible contingencies.

"The British Colonel Connolly, who is mentioned in Gen. St. Clair's letter, arrived at Louisville in the beginning of October, having traveled from Detroit, through the woods, to the mouth of the river Big Miami, from which he came down the Ohio in a boat. My agent in Louisville gave me immediate information of that fact, and of the intention which Connolly had to visit me. Suspecting the nature of the negotiation he had on hand, I determined, in order to discover his secret views, to be beforehand with him, and to invite him here. Consequently, he came to my house on the 8th of November. I received him courteously, and as I manifested favorable dispositions toward the interest of His Britannic Majesty, I soon gained his confidence, so much so that he informed me that Great Britain, desiring to assist the American settlers in the West in their efforts to open the navigation of the Mississippi, would join them with ready zeal to dispossess Spain of Louisiana. He remarked that the forces in Canada were not sufficient to send detachments of them to us, but that Lord Dorchester would supply us with all the implements of war, and with money, clothing and supplies to equip ten thousand men, if we wished to engage in that enterprise. He added that, as soon as our plan of operation should be agreed upon, these articles would be sent from Detroit, through Lake Erie, to the river Miami, and thence to the Wabash, to be transported to any designated point on the Ohio, and that a fleet of light vessels would be ready at Jamaica to take possession of the Balize, at the same time that we should make an attack from above. He assured me that he was authorized by Lord Dorchester to confer honors and other rewards on the men of influence who should enter on that enterprise, and that all those who were officers in the late Continental army should be provided with the same grade in the service of Great Britain. He urged me much to favor his designs, offering me what rank or emoluments I might wish for, and telling me at the same time that he was empowered to grant commissions for the raising of two regiments, which he hoped to form in Kentucky.

"After having conversed with him and found out all that I wished to know, I began to weaken his hopes by observing that the feelings of animosity engendered by the late revolution were so recent in the hearts of the Americans, that I considered it impossible to entice them into an alliance with Great Britain; that in this district, particularly in that

part of it where the inhabitants had suffered so much from the barbarous hostility of the Indians, which were attributed to British influence, the resentment of every individual was much more intense and implacable. In order to justify this opinion of mine, and induce him to go back, I employed a hunter who feigned attempting his life. The pretext assumed by the hunter was the avenging the death of his son, murdered by the Indians at the supposed instigation of the English. As I hold the commission of a civil judge, it was, of course, to be my duty to protect him against the pretended murderer, whom I caused to be arrested and held in custody. I availed myself of this circumstance to communicate to Connolly my fear of not being able to answer for the security of his person, and I expressed my doubts whether he could escape with his life. It alarmed him so much that he begged me to give him an escort to conduct him out of our territory, which I readily assented to; and on the 20th of November he re-crossed the Ohio upon his way back to Detroit. I did not dismiss him without having previously impressed upon him the propriety of informing me, in as short a time as possible, of the ultimate designs of Lord Dorchester. As this man was under the protection of the laws of nations, and as he carefully avoided to commit any offense against our government, I considered the measure I had resorted to as the most appropriate to destroy his hopes with regard to this country, and I think the relation that he will make on his return to Canada will produce the desired effect. But should the British be disposed to renew the same attempt, as it may very well turn out to be the case, I shall be ready to oppose and crush it in the bud.

"I deem it useless to mention to a gentleman well versed in political history that the great spring and prime mover in all negotiations is *money*. For these objects I have advanced five thousand dollars out of my own funds; and half of this sum, applied opportunely, would attract Marshall and Muter on our side, but it is now impossible for me to disburse it."

General St. Clair, in a letter to Major Dunn, of date December 5th, says: "Dear Dunn—I am much grieved to hear that there are strong dispositions on the part of the people of Kentucky to break off their connections with the United States, and that our friend Wilkinson is at the head of this affair. Such a consummation would involve our country in the greatest difficulties, and completely ruin it. Should there be any foundation for these reports, for God's sake make use of your influence to detach Wilkinson from that party."

Though Wilkinson promised no further dispatches until May, yet on the 14th of February, he again wrote to Miro, from which letter we quote: "If you have felt some disquietude over the silence of the

Ministry on my memorial, and if you have nothing satisfactory from our dear friend Navarro, I think you should be satisfied, because it seems our plan has been eagerly accepted. Don Gardoqui has received ample powers to make proper arrangements in order to estrange our people from the Union, and induce them to form an alliance with Spain. I received this information first from Mr. Brown, Congressman from this district, who, since our application for admission into the Union has been suspended, entered into some free communications on this matter with Gardoqui. He returned home in September, and, finding some objection to our project, positively refused to advocate in public the propositions of Gardoqui, as he deemed them fatal to our cause. Brown is one of our deputies or agents; he is a young man of respectable talents, but timid, without experience, and with very little knowledge of the world. Nevertheless, as he perseveres in his adherence to our interests, we have sent him to the new Congress, apparently as our Representative, but in reality as a spy on the actions of that body. I would myself have undertaken that charge, but I did not for two reasons—first, my presence was necessary here; and next, I should have found myself under the obligation of swearing to support the new government, *which in duty I am bound to oppose.*”

This lengthy supplemental dispatch closes with the pithy and facetious expression: “Herein enclosed (Doc. No. 3.), you will find two *Gazettes*, which contain all the proceedings of our last convention. You will observe that the memorial to Congress was presented by me, and perhaps your first impression will be one of surprise that such a document should have issued from the pen of so good a Spaniard. But my policy is to justify in the eye of the world our meditated separation from the Union, and to quiet the apprehensions of some friends in the Atlantic States. Thus having publicly represented our rights and established our pretensions, if Congress does not support them, which it can not do, even if it had the inclination, not only will all the people of Kentucky, but also the whole world, approve our seeking protection from another quarter.”

On the 11th of April, Miro forwarded the two very expressive dispatches of Wilkinson to Madrid, and the documents annexed to them. He shares Wilkinson’s opinion that the independence of the Western people, under protection of and alliance with Spain, would be more to the interest of Spain than direct annexation to her dominions, on account of the responsibilities and expenses which such an acquisition would entail, and also on account of the jealousies and oppositions it would elicit from other powers. He urgently inquires of the Cabinet what he shall do in case Kentucky declares her independence and sends

delegates to him. He is unprepared to supply her people with ammunition, arms, and other implements they may need to resist any action of the Federal Government, should it attempt to coerce them into submission. Said he further to the Minister: "In paragraph B you will find an account of the bold act which Wilkinson has ventured to take, in presenting his first memorial in a public convention. In this act he has so completely bound himself that, should he not be able to obtain the separation of Kentucky from the Union, it has become impossible for him to live there, *unless he has suppressed, which is possible*, certain passages which might injure him. On account of the opposition of Marshall and Muter the convention ordered new memorials to be presented to Virginia and to Congress, to obtain the independence of Kentucky, her admission into the Union, and the free navigation of the Mississippi."

Miro adds that he disagreed with Wilkinson as to the solution of the first two questions, and expressed the opinion that their separation from Virginia and reception into the Union, would be conceded to them; that the answer of Congress was not deceitful, because the right of Kentucky to what she claims is incontestable, and derived from the articles of confederation on which the United States established their first government. He thought, with Wilkinson, that it was a bad stroke of policy on the part of Spain to have granted the Kentuckians the navigation of the Mississippi, as it withdrew a motive of self interest to become independent, and to rely on Spain. * * * * On the 5th day of January, 1790, Sebastian addressed a letter to Wilkinson, urging, as this affair had taken up the greater portion of his time, that the Spanish government should indemnify him, if it did not generously reward him. On principle, he professed to be as much attached to the interests of Louisiana as any one of the subjects of His Catholic Majesty. This letter Wilkinson forwarded to Miro. About the 26th of January a letter from Wilkinson to Miro was couched in less flattering tones. The grant of the navigation of the Mississippi had satisfied the people, and even left them with little desire or motive to emigrate to Louisiana. On his return to Kentucky he had found a great change, even among the warmest friends. "I attribute this," said he, "either to the hope of promotion, or the fear of punishment. According to my prognostic, Washington has begun to operate on the chief heads of this district. Innes has been appointed a Federal Judge; George Nicholas, District Attorney; McDowell, son of the President of the Convention, and Marshall, to offices resembling that of Alguazil Mayor; and Peyton Short is made a Court-house officer. I place little reliance on Nicholas and McDowell; but Innes is friendly to Spain and hostile to Congress, and I

am authorized to say that he would much prefer receiving a pension from New Orleans than one from New York. I fear we can rely on but few of our countrymen, if we can not make use of liberal means. Should the King approve our designs on this point it will have to be broached with difficulty."

Relative to the Convention to be held in June, he promises to attend, and, with the help of Sebastian and other friends to do all in his power to promote the cause. He is strongly suspected by Congress, which spies his movements at every step. An open avowal of plans now to separate from the Union would endanger his personal security and deprive him of the power of serving the interests of Spain. The situation was painful and mortifying, that, while abhorring all deceit, he was obliged to dissemble. This condition leads him to devise an opportunity to "publicly propose himself a vassal of His Catholic Majesty, and contingently claim his protection."

On the 22d of May, Miro rendered an account of his last transactions with Wilkinson, with the correspondence, in dispatches to Madrid. He agreed that the concessions of the right of navigation and trade to the Kentuckians had prejudiced the hopes of separation and alliance with Spain; yet he had not imagined that the effects would be so sudden. Wilkinson's hosts of influential followers had mysteriously vanished, excepting Sebastian. He considered that he was liable to be misled in his opinions of a man operating six hundred leagues away, and who had rendered, and was yet rendering, services to His Majesty, as explained before. But now he is full of invincible obstacles and personal risks should he declare himself, and avails himself of the motive which he puts forth to cover his precipitation. Nevertheless, he thinks the said Brigadier-General ought to be retained in the service of His Majesty, with an annual pension of two thousand dollars, which he had already proposed in his confidential dispatch, No. 46, that he may communicate anything affecting the interest of the province, and may dissuade the Kentuckians from any evil designs against it. Miro further recommended a similar pension to Sebastian, "because I think it proper to treat this individual, who will be able to enlighten me on the conduct of Wilkinson, and on what we have to expect from the plans of the General." Thus, the code of corruption was complied with to its utmost details. A spy was set to watch a spy, while both consented to play the part of dissembling conspirators against the government towards which they were openly professing allegiance, thus bartering honor and good faith for Spanish gold.

These extracts from Smith's History of Kentucky, based upon the

original documents in the Spanish archives, are sufficient to throw a flood of light upon many questions which have long remained in the dark; and it is therefore not necessary to follow the disgraceful Spanish intrigue through its further movements to its final complete failure. Enough has been reproduced to show that the old-time charge that Humphrey Marshall's account of the Spanish intrigue, as published in his history of Kentucky, was based only upon his prejudice and malice, is without foundation in fact; but, on the other hand that his account was substantially true. These revelations from the tomb of by-gone years also serve to show the animus of the assault upon Humphrey Marshall's character on account of his vote in the Virginia Constitutional Convention, as well as his vote in the United States Senate on the ratification of the Jay treaty. The adoption of the Constitution by Virginia, and of the Jay treaty by Congress, more than anything else, served to frustrate the schemes and plots of the Spanish and French intriguers; and naturally these men could neither forget nor forgive it; so they poured out the vials of their wrath upon the sturdy man whose rugged integrity of character and devoted love of his own people and country made him an insuperable obstacle in the way of the consummation of their treasonable designs.

If Joseph M. Street could have procured this testimony, which is now history, Judge Innes could not have obtained against him a judgment for damages which ruined him; nor would there have been a "divided jury" in the cause of Innes vs. Marshall. It does not appear that Judge Innes ever received a pension from Spain (though Wilkinson made an open bid for one for him), but the testimony shows that he was deeply implicated in the intrigues. Wilkinson himself was court-martialed in 1811 upon the charge of receiving a pension from Spain, and succeeded in being acquitted. The charge was not proven. Afterwards he wrote a voluminous history of his own times, comprising three large volumes. This work was collated from seventeen large trunks full of evidence going to establish his innocence. Throughout this whole work the name of Humphrey Marshall does not once appear, though Marshall was chiefly instrumental in making the charges against him public, and bringing them to a head. There are several things to

show that Wilkinson had a contempt for Humphrey Marshall—the kind of contempt which a conscious knave always has for an honest man.

The Marshall to whom Wilkinson refers in his letters to Miro was Col. Thomas Marshall, and the statement that he could buy him to the Spanish scheme, with Muter thrown in, for \$2,500, was undoubtedly a plan to beat the Spanish Government out of that much money to put into his own pocket; and perhaps it soothed his malignity to thus asperse, although fruitlessly, the character of a man whose unpurchasable integrity he had good reason to believe might be fatal to the success of the intrigues with Spain.

At that time Humphrey Marshall, though only twenty-eight years old, was certainly of the first-class of society in Kentucky, and withal then a man of considerable influence in the district; and he was undoubtedly very much opposed to the intrigue, but Wilkinson ignored him altogether in his correspondence with Miro.

Furthermore, Wilkinson's statement that all the leading men of Kentucky except Marshall and Muter were in sympathy with his movement, was a deliberate exaggeration, made, no doubt, to magnify his own importance in the minds of the Spaniards. Marshall's History of Kentucky say:

Vol. 1, p. 368.—It is not that society is deficient in honest and capable men. No; nature is bountiful, and delights in their production; every country has them. Kentucky has always possessed her share, but they have not always been employed. They are not generally favourites with the people—they stand but little chance of success in a contest with demagogues—they cannot practice those arts which but too often conciliate popular favor, and they are put in the background. The consequence is *they are lost to the country for all public purposes.* * * * *

It is nevertheless a truth, which may be related at this place, that so long as the leaders of the faction for violent separation continued to offer themselves to the people in elections, they were elected; and that they did not disturb the country and infest the conventions of 1789 and '90 is because they were defeated in 1788, saw no favourable opening for success, and withdrew themselves from the contest. They could manage the ignorant part of the community; they were counteracted and defeated by the intelligent. To this counteraction and defeat is Kentucky to attribute her escape from degradation, from internal

discord and civil war ; and to the same causes does she owe the high and honourable standing which she occupies in the **FEDERAL UNION**.



Burr's Conspiracy.

The first step in the exposure of the Burr Conspiracy was taken, as is well known, in Kentucky, by Joseph Hamilton Daveiss, then (1806) the District Attorney for the State. Col. Daveiss preferred his charges against Aaron Burr in Judge Innes's Court at Frankfort, and though Burr was undoubtedly guilty, the case did not come to trial, the jury refusing to indict, and the arch conspirator was discharged with great *eclat*, and went on his way rejoicing ; soon to be overtaken however by exposure and irreparable disaster. Humphrey Marshall did not appear in the case, but it is known that he furnished many of the facts and suggestions upon which his brother-in-law and warm personal friend, Col. Joseph Hamilton Daveiss, proceeded in the matter. Henry Clay was chief counsel for Burr, and from that time began the hostility between himself and Humphrey Marshall which culminated a few years later in a duel between them. They were afterwards reconciled, only again to become enemies.

But little is known of the Kenuckians who were implicated in the Burr conspiracy. Wilkinson is known to have been deeply in it, and it is believed that the scheme had involved very many of those Kentuckians who, twenty years before, had been concerned in the Spanish, and later in the French, intrigue. It surely is glory enough for the memory of Humphrey Marshall that he was the chief instrument in exposing and exploding all these conspiracies against the peace and integrity of his country !

Humphrey Marshall's papers, which might have thrown new light upon the Burr episode, were long since destroyed ; and the envelope marked "Burr Conspiracy," in the papers of Col. Joseph Hamilton Daveiss, is empty. It is believed that they were destroyed by Col. Daveiss's brother, in order to spare the feelings and reputations of people toward whom he felt kindly.

In the Legislature Again.

In 1807, soon after the Sebastian and Burr exposures, Mr. Marshall determined to again enter politics, and became a candidate to represent Franklin county in the lower house of the General Assembly; for notwithstanding he was still a Federalist, and Franklin county strongly Republican, the part he had taken in the recent stirring events had restored him to public confidence, and perhaps revealed to the people something of the real nature of the causes which had operated originally to make him unpopular. Mr. Marshall says, in his history: "It devolved on Humphrey Marshall, laboring under the imputation of being a *Federalist*, to reduce his former resolution for becoming a candidate for the house of representatives, to practice, in order, if elected, to try the sense of the country in relation to the Judge [Innes]. Accordingly he declared himself a candidate, and produced almost as much agitation among the immediate adherents of the Judge, as the commencement of "*The Western World*." To defeat him was the grand object—and for this purpose one opposing candidate was to be selected, all others on their side to be kept back. Mr. Nathaniel Richardson, a very worthy farmer who had for some years before unsuccessfully essayed the practice of the law, was selected, and seldom had greater efforts been made on any similar occasion, by newspaper publications, or otherwise, than those which forthwith ensued. All the horrors of federalism were now conjured up, and set out in new dresses, or the old. Mr. Marshall, not merely called upon to answer for his own offenses, real or imputed, was to be made responsible for such as had been or might be ascribed to others; and that to Spanish conspirators, French partisans and Burrites—among whom might be found the most profligate members of society, and certainly very many worthy citizens, whose prejudices, long trained, could the more easily be employed to mislead their judgments. About eleven hundred votes were given at the election, which terminated in Mr. Marshall's favor by a small majority. This point gained, he thought on further means. The sum of his federalism was to enable the people to see the foul blotch which filled the Federal

Court, as a necessary inducement to them to unite in an attempt to wipe it out."

Mr. Marshall's majority over Mr. Richardson was eleven votes, but even that number was quite a triumph for "an old Federalist" in a strong Republican county; especially does it appear so when we remember the odium in which Federalists stood in Kentucky in that day. Mr. E. D. Warfield, in his "Kentucky Resolutions of 1798," gives an instance from O. H. Smith's "Early Trials in Indiana," which goes far to show the standing of Federalists in those days. He says: "In early times in Indiana a political libel suit was tried in the Franklin Circuit Court. The principal allegation was that the defendant had called the plaintiff an old Federalist. The issue was made up on this as an agreed statement of facts, and proof was taken as to whether the offense constituted a libel. The chief witness was an old man named Herndon who had moved to Indiana from Kentucky. He swore that he considered it libelous to call a man a Federalist; that he would shoot a man who called him either a horse-thief or a Federalist; that he would rather be called anything under heaven than a Federalist; and considered a thousand dollars the least measure of damages; that he considered the term as equivalent to Tory, or enemy of his country, and from the earliest days of Kentucky such he believed to have been the common acceptance of the term. Other witnesses corroborated this testimony and the jury found a verdict to the effect that 'to call a man a Federalist was libelous,' and fixed the damages at one thousand dollars."

Mr. Marshall, Federalist though he was, was again elected to the Legislature in 1808, defeating his opponent, Mr. John M. Scott, by eleven votes; and in 1809 was again re-elected by a small majority.

Scarcely had Mr. Marshall taken his seat in the Legislature of 1807 when Mr. Thomas Bodley, a member for Fayette county, preferred against him grave charges; to-wit: that he had committed a gross fraud in mutilating and defacing the plat and certificate of a certain survey of land made in the name of John and Robert Todd, which he had purchased from them; that he had sworn falsely and corruptly in an affidavit; that he had obtained land twice upon one warrant, &c.; and specifications accompanied these charges. The matter was referred

to a committee, which Mr. Marshall charged was packed against him by the Speaker; and this committee, in February, 1808, reported that Humphrey Marshall was guilty of the charges and "ought to be, and is hereby expelled from his seat as a member of the house of representatives."

The House then took up the report of the committee. Mr. Brents proposed to amend the report by submitting in lieu of it this resolution: "Resolved, that the charges against H. Marshall contained in the letter of T. Bodley, as specified by the committee, are not supported by evidence, and that he ought to be exonerated from further answer thereto." And although Mr. Marshall was the only Federalist in the House, this amendment was adopted by a vote of thirty yeas to twenty-three nays.

In the meantime, Mr. Marshall, unterrified by the charges brought against him by Judge Innes's son-in-law, Mr. Bodley, had, in January, 1808, introduced a resolution providing for an inquiry into Judge Innes's conduct in regard to the Spanish conspiracy, and looking to his degradation from the Federal bench. Judge Innes met the proposition with great frankness, before the resolutions were fairly committed, by sending to the Legislature a formal note, inviting the fullest inquiry and investigation into his conduct. The matter, however, came to naught, as the Legislature finally decided that it had no jurisdiction, Judge Innes being a Federal, and not a State officer; though the opinion was expressed that the constituted authorities of the United States should make an inquiry into the matter.

The records of Humphrey Marshall's services in the Legislature at this time are scanty, the journals of the session being not in existence, as it is believed; or, at any rate, extremely rare. Collins states that "in the session of 1808-9 the limitation in actions of ejectment was changed from twenty to seven years, where the defendant actually resided upon the land, and claimed under an adverse entry or patent, and the new limitation was made available in all suits at law, or in equity for the recovery of land. This celebrated act has quieted all litigation upon original conflicting claims, and was introduced by Humphrey Marshall."

The Duel With Henry Clay.

It was in the session of 1808-9 that the celebrated duel between Humphrey Marshall and Henry Clay occurred. These two gentlemen were at that time boiling over with animosity toward each other, from causes arising a few years before during the *Western World* and Burr excitements. Criminations and recriminations had passed, and it was believed that the two men would engage in an altercation upon almost any provocation. It has been stated that Mr. Clay was defeated for the Speakership of the House by several of his friends withholding their votes from him, because they wanted him to stay on the floor, where he would have a better chance to meet the attacks of Mr. Marshall, which it was supposed would be made.* Collins states that Clay and Marshall sat near each other, being separated in fact by only one chair, which was occupied by Gen. Christopher Riffe, the member from Lincoln county, a burley German of almost gigantic size and herculean strength.

Several little "spats" had occurred between the two gentlemen in the discussion of various matters which had come up; but, on the whole, the peace had been pretty well preserved until in the latter part of December, when Mr. Clay introduced, with a grand flourish, a resolution to the effect that all members of the Kentucky Legislature should refuse to buy any article of British manufacture, and should wear jeans, or homespun apparel; and it must be admitted that if Mr. Clay was sincere in this matter it reflected but little credit upon his good sense. Humphrey Marshall considered it a piece of demagoguery, and introduced a substitute which received no vote except his own. Mr. Clay's resolution was debated for some days. Mr. Marshall wore homespun nearly all the time as a matter of convenience and choice. Mr. Clay, on the contrary, was usually a fine dresser, but after the introduction of his resolution, began to wear a suit of jeans. Mr. Marshall then had a tailor make him a suit of the very finest English broadcloth that could be found. Donning this, to show the contempt he had for what he considered Mr. Clay's demagoguery, as well as for the spirit it was

*Prentice's Life of Henry Clay.

intended to excite, he would come strutting down the aisles of the house for the express purpose of annoying Mr. Clay.

Finally, toward the close of the debate, Mr. Clay made a stinging speech to which Mr. Marshall replied more than stingingly. With all the bitterness of his sarcastic tongue, he openly charged Mr. Clay with demagoguery, and his words were so offensive that they reached the point of deadly insult. Clay resented the insult on the spot, attacking Marshall, but Gen. Riffe seized each with one hand, and held them apart, saying earnestly: "come poys, no fighting here, I vips you both,"* and closed the scene for the present.

But it was not closed for good. Clay immediately challenged Marshall, who as speedily accepted the gage of battle, and a meeting was soon afterwards had in Indiana, opposite, or nearly opposite Louisville. The seconds in the affair published an official account of it in the Lexington Reporter of January 26th, 1809, which is here reproduced in full, as there is no satisfactory account of the affair to be found in any of the numerous biographies of Mr. Clay.

For the purpose of preventing any misconstruction or misrepresentations that might arise out of the late affair of honor between Mr. *Henry Clay* and Mr. *Humphrey Marshall*, the following documents are submitted to the public:

January 4th, 1809.

H. MARSHALL, Esq.—PRESENT.

SIR.—After the occurrences in the house of representatives on this day, the receipt of this note will excite with you no surprise. I hope, on my part, I shall not be disappointed in the execution of the pledge you gave on that occasion, and in your disclaimer of the character attributed to you. To enable you to fulfill these reasonable and just expectations, my friend, Major *Campbell*, is authorized by me to adjust the ceremonies proper to be observed.

I am, Sir, Yours, &c.,

HENRY CLAY.

January 4th, 1809.

H. CLAY, Esq.,—Frankfort.

SIR.—Your note of this day was handed me by Major *Campbell*.

* Collins.

The object is understood; and without designing to notice the insinuation it contains as to character, the necessary arrangements are, on my part, submitted to my friend, Col. Moore.

Yours, &c.,

H. MARSHALL.

RULES to be observed by Mr. *Clay* and Mr. *Marshall*, on the ground, in settling the affair now pending between them:

1.—Each gentleman will take his station at ten paces distance from the other, and will stand as may suit his choice, with his arms hanging down, and after the words Attention! Fire! both may fire at their leisure.

2.—A snap or flash shall be equivalent to a fire.

3.—If one should fire before the other, he who fires first shall stand in the position in which he was when he fired, except that he may let his arms fall down by his side.

4.—A violation of the above rules by either of the parties (accidents excepted) shall subject the offender to instant death.

JOHN B. CAMPBELL.

JAMES F. MOORE.

Conformably to previous arrangements, Mr. *Clay* and Mr. *Marshall*, attended by their friends, crossed the Ohio at Shippingport, and an eligible spot of ground presenting itself immediately below the mouth of Silver Creek; ten steps, the distance agreed on, was measured off, and each gentleman took his position. The word being given, both gentlemen fired. Mr. Marshall's fire did not take effect—Mr. Clay's succeeded so far as to give Mr. Marshall a slight wound on the belly. Preparations were then made for a second fire. Mr. Marshall again fired without effect—Mr. Clay snapped, which, agreeably to rules agreed on, was equivalent to a fire. A third preparation was made, when each gentleman stood at his station, waiting for the word. Mr. Marshall fired first, and gave Mr. Clay a flesh wound in the thigh. Mr. Clay fired without effect. Mr. Clay insisted on another fire very ardently; but his situation, resulting from the wound, placing him on unequal grounds, his importunate request was not complied with. We deem it justice to both the gentlemen to pronounce their conduct on the occasion, cool, determined, and brave in the highest degree. Mr. Clay's friend was under the impression that Mr. Marshall, at the third fire, violated a rule which required that he who fired first should stand in the position in

which he was when he fired ; but Mr. Marshall's friend, being convinced that Mr. Clay had fired previous to Mr. Marshall's moving from his position ; this circumstance is considered as one in which gentlemen may be mistaken on such occasions, and is not to be noticed in this affair.

JOHN B. CAMPBELL.

Thursday, January 19, 1809.

JAMES F. MOORE.

The pistols with which this celebrated duel was fought belonged to Col. Joseph Hamilton Daveiss, and are now (1889) in the possession of a member of the family living in Harrodsburg, Ky. *

No biography of Humphrey Marshall has heretofore been written, and of the various biographies of Henry Clay, all except that by Hon. George D. Prentice, published in 1832, make merely a passing allusion to this duel. Mr. Prentice does not make much more, but what he had to say called Humphrey Marshall from his retirement for his last newspaper controversy, in reply. Mr. Prentice says, (pp. 42, 43) : "In the year 1808, Humphrey Marshall, a gentleman of whom we have already made mention, became a member of the Kentucky Legislature. He was at that time a man of strong mind and extensive information, but a bitter Federalist, and an unwearied opponent of Mr. Clay. Mr. Marshall had repeatedly assailed Mr. Clay and his friends in the newspapers; and, as a natural consequence, their political hostility was turned to personal hatred. Both now being members of the Legislature, there appeared to be a willingness on the part of the other members to bring them into direct collision. To this end, several gentlemen declined voting for Mr. C.'s re-appointment to the office of Speaker, knowing that if he were in the Speaker's chair he would not have an opportunity of meeting his antagonist without restraint. During the first weeks of the

* The following letter from Mr. Clay, addressed to Hon. James Clarke (afterwards Governor of Kentucky) may be of interest in this connection:

LOUISVILLE, 19 January, —9.

"DEAR CLARKE:

"I have this moment returned from the field of battle. We had three shots. On the first I grazed him just above the navel—he missed me. On the second my damned pistol snapped, and he missed me. On the third I received a flesh wound in the thigh, and owing to my receiving his fire first, etc., I missed him.

"My wound is in no way serious, as the bone is unhurt, but prudence will require me to remain here some days.

Yours,

H. CLAY."

The original of this is in the possession of a lady at Henderson, Ky.

session Clay and Marshall frequently met each other in debate, and the former was uniformly victorious ; being, in fact, incomparably superior in all respects to his antagonist. At length Mr. C. brought a resolution before the House, that each member, for the purpose of encouraging the industry of the country, should clothe himself in articles of domestic industry. This resolution called into exercise all Mr. Marshall's talents of vituperation. He denounced it as the project of a demagogue, and applied a number of epithets to its author which no parliamentary rules could justify. Mr. Clay's language in reply was probably of a harsh character ; and the quarrel proceeded from one stage to another, till, according to the laws of honor, which every Kentuckian of that day was taught to reverence, no alternative remained to Mr. Clay, and he was required to challenge his antagonist. The challenge was accepted. The parties met, and the first shot was exchanged without other effects than a slight wound to Mr. Marshall. On the second or third fire Mr. Marshall's ball gave Mr. Clay a flesh wound in the leg, and the seconds now interfered and prevented a continuance of the combat."

Judge Lucius J. Little, in his "Life of Ben Hardin," states that Mr. Prentice's praise of Mr. Clay must be taken with a grain of salt, which is true. Undoubtedly great, as Mr. Clay was, he was not nearly so great as Mr. Prentice attempted to depict him. As Humphrey Marshall was the only Federalist in the House at that time it was doubtless an easy matter for Mr. Clay to appear "uniformly victorious" in their debates. Mr. Clay was certainly superior to Mr. Marshall as an orator ; but that he was "incomparably his superior in all respects" is not a fact. Mr. Marshall was his equal in intellect and mental ability, and in every other way except as an orator ; and would have more than equalled him in fame if he had belonged to the popular, and Mr. Clay to the unpopular, political party of the times.

Mr. Marshall published in the *Kentucky Gazette* of January and February, 1832, a series of four articles under the head of "Biography of Henry Clay, by George D. Prentice, Reviewed and Revised by Humphrey Marshall." Of these four numbers only the fourth now survives, and it appears in the *Gazette* of February 18th, 1832 ; the three preceding numbers of the paper, and consequently of the review, being missing

from the files. It is only just to Mr. Marshall that he should be heard in this connection. So far as is known it was his last tilt in the newspapers. He was then about seventy-two years old; but, as will be seen, was still "a man of strong mind and extensive information." He says:

NO. IV.—There is an adage that "he who puts his hand to the plough should not look back." A sentiment of near kin to this would impel me forward to the end of my undertaking; and consequently to say something more of the biography of Mr. Clay, and of this embargo resolution, as the ostensible matter of contest between us—a source of inexhaustible eulogy to him, to me of reproach, according to assertions and inferences furnished in his biography. Thus we read (p. 43): "But to Mr. Clay's admirers there is much consolation in the fact that the quarrel which led to the catastrophe had its origin in his devotion to the policy of encouraging domestic manufactures," &c. Such as is the representation, such should be the consolation flowing from it; and thus would the latter be as evanescent as the first was destitute of truth. For it has already been shown that the resolution, in fact, is not the thing which the Biography represents it to be. And, therefore, this last touch of *sycophantic unction* is a mere protraction of the series of falsehoods propagated in the book. It is for Mr. Clay's sake only that the topic was noticed, since he is to be considered, if not the principal, at least an accessory—I care not whether before or after the fact.

To the same source I look for the representation of the part I took in the debates on the resolution.

"This," it is said (book-wise), "called into exercise all Mr. Marshall's talents for vituperation." This is declamation; mere assertion. It shows nothing; it proves nothing. And it now seems to me only necessary to recite the resolution in order to demonstrate its folly and futility. This I opposed. Not as an intelligent, practical project for encouraging domestic or even American manufactures; but *because* it was an *arbitrary* attempt to regulate individual clothing, and the affairs of a family, under color of coercing the belligerents of Europe; and subjecting ourselves *personally* to the operation of their orders and decrees for any indefinite length of time they might be kept in force. For this is the language of the resolution:

"The members of the General Assembly will clothe themselves in productions of American manufacture, and will abstain from the use of cloth or linens of European fabric *until the belligerent nations respect the rights of neutrals by repealing such of their orders and decrees as relate to the United States.*"

And is this the basis of the "American System?" It is the *terrapiin system* only! Did I ridicule it? If I had possessed talents for ridicule, I would. Did I say it was the project of a demagogue? So the Biography has it; and this was vituperation; and even now—so correct was the remark, that *even now*—I might repeat the description. Mr. Clay, then dressed in belligerent cloth—British, I believe—declaimed most manfully and patriotically against the use of it. In the habit of wearing homespun in the summer, then in a pair of pantaloons of it, I felt no necessity of giving similar proofs of my love of country.

I might possibly have contrasted the zeal and eloquence of the orator in support of his resolution, with his conduct at the preceding session in support of Judge Innes; with that of the winter of 1806 in defending Burr and Sebastian.

The idea of demagogue, I admit, was strong, as the character was played often before my eyes, and perhaps never in a more masterly manner than by Mr. Clay. Only suppose that he represented the resolution as *his scheme of American manufactures and internal improvements*, as his Biography now represents it, and that it was voted for as such, would he not have sported the demagogue on the voters? that is fought under false colors? Could any man who voted for that resolution, 1808-9, take it up now and say it is a project, a system of internal improvement, or even for encouraging domestic manufactures, which merited support? It seems to me hardly possible. But I am done with both the resolution and the duel; unless it is to say that I neither offered the resolution, opened the debate, gave the insult (I mean the first) nor sent the challenge, but throughout was on the defensive. And am so still—although, after being stricken, I strike.

Mr. Clay and myself had a previous intercourse for some years before we met as legislators. I had important law-suits in the courts, and employed Mr. Clay in some cases, which readily enough led to civilities. But I was a *proscribed Federalist*, and Mr. Clay's sagacity required no prompting as to politics. Doubtless, *anti-federalism* was bred in his bones. But Mr. Clay gave early proofs of superior talents and eloquence, as well as of aspirations to distinction. The occurrences of 1806, made known or alluded to in these numbers, induced a diminution of courtesy, and infused much coldness into our intercourse previous to final rupture.

I mention, as a necessary explanation of my situation, alluded to in relation to the *State Court of Appeals* (See No. 1), that a case of mine, involving my fortune, was before it, had been heard, and the decision against me was suspended (as I afterwards learned) in consequence of one of the four Judges withholding his concurrence from the decree. The suspension is attested by the record; while the occurrences of 1806-7

resulted in a new court ; every Judge was changed ; the Spanish phalanx was broken ; and my case was taken up anew, was re-argued, and decided unanimously in my favor. Thus I escaped Charybdis, but was still involved in Scylla, as will be shown.

About 1805 or '6, Mr. Clay had, as counsel for Currie's heirs, obtained a decree against me from his friend, Judge Innes, in a land case of considerable value ; and, suing out a writ of error, I went on to the term of the Supreme Court, 1807, in order to attend to the case ; and found Mr. Clay, who was in the Senate of the United States, again opposed me ; but not uncivil, nor entirely forgetful of our relations as citizens of the same State. We argued the case, and I succeeded. But Mr. Clay, not satisfied with one of his best efforts to sustain the decree of his friend, Judge Innes, though most palpably unjust, and with all the Supreme Court who heard the cause against him, he moved for a rehearing. This told me that Mr. Clay felt more on the subject than a necessary attachment to his client's interests. And yet, but little impression was effected by it, so much are attorneys allowed to do without prejudice when they have a client's name for an *Ægis*. There hardly remained, in fact, any form of friendship between us when we next met. We were not yet virulent enemies, even in feelings, so far as I knew ; and certainly not in overt acts, ever, on my part, until the last extremity. Mr. Clay was in the triumphant party ; myself, not only on the vanquished side, but almost, if not entirely, of that party in the House. It was but a common prudence in me to be circumspect and inoffensive. I was so, without unseemly stooping to any man. Mr. Clay rode the high horse of party with much gallantry indeed ; but also with much pride and some frowardness. Had he not run his brute on me I never should have encountered him. The Biography puts me in the wrong ; it does great injustice. Having, however, set it right, I have no more to say on that part of my task.

Should it be remembered that this is an old subject, untimely revived, I agree that it is ; and that circumstance has increased my complaint.

But I have not called it up. Who has ? Whom was it designed to profit ? Whom to injure ? No man can read the book without finding the answer. Mr. Clay rises on the prostration of J. H. Daveiss and myself exactly in those parts of the conduct of each where *we* should rise and *he* should sink.

No American statesman, or writer of Mr. Clay's life, can form a proper estimate of his character without being intimately acquainted with his conduct in 1805, '6 and '7, in relation to Burr, Sebastian, Innes, &c., somewhat detailed in these numbers in order that he might be

known. Whether proper use will be made of the information, or not, is quite another affair. Whether a party ever possessed sufficient candor to profit by the truth in reference to a favorite or leader, or to allow reason its due weight in estimating a fact, are probably events yet in the crucible of experiment. All I proposed was to state the facts material to a fair and correct judgment, without troubling myself about the effect; not that I am indifferent, but that it is wholly problematical, and I can have no other control over the result. The Biography of Mr. Clay presents the case of Col. Burr as one involving Mr. Clay in censure for the part he acted, and as requiring an apology for his conduct. Thus (p. 31): "But as Mr. Clay's conduct in this affair has been the subject of many unwarrantable remarks from his enemies, we have thought it expedient to give a brief sketch of the important facts connected with it," &c. And thence has proceeded, as previously shown, a perversion, or else a suppression of the facts, and a slander of Burr's prosecutor as unfounded, and, I may say, as *unrighteous* as ever fell from a guilty pen; and in this way is the apology for Burr and Clay conducted in the Biography. Well, who is the author? O, George D. Prentice. And where did he get his story but from Mr. Clay? Why should Mr. Clay calumniate Mr. Daveiss? He possessed rival talents, was about the same age, had a bold spirit, was in Mr. Clay's way, prosecuted Col. Burr, was a Federalist, and left a brilliant fame. He was no less feared than hated by the whole set of Burrrites. To mortify him, when alive, was their delight. Doubtless it was gratifying to Mr. Clay to see his name traduced in the book. Gentle reader, how else came it there? Explain that. Why else the abuse?

Yes, Mr. Clay was *censured*; not by Burrrites; not by Sebastian and Innes, or their adherents. Says the Biography, "by his enemies;" but who were his enemies? Why, every man, in the meaning of the book, who did not *applaud* him; yes, every honest man in the community who believed Burr was guilty, was, according to Mr. Clay's Biography, *his enemy*. Burr was guilty, and the evidence of it was abundant for ordinary belief. So he had enemies, and so had Mr. Clay.

In Fayette, Mr. Clay's county, the book takes notice (p. 38): "but the fact of his [Clay's] having been the attorney of Col. Burr gave courage to the Federalists, and emboldened them to bring out a candidate in opposition to him." All, however, to no purpose. The Federalists, says the book, had hoped to turn their indignation against Burr on Mr. Clay. But all in vain. Such has been the general, if not the invariable, effect of party spirit. But Mr. Clay addressed the people of Fayette, in 1807, on the occasion, and so *played the orator* as to give his own representation of the facts, and doubtless made the people believe what they were very

ready to believe (for Mr. Clay had been high in their confidence, and was affecting in speech) and protesting his belief of Burr's innocence, of his own ignorance of his guilt, and that he was but his attorney-at-law, and the greatest criminals were allowed attorneys—even Mr. Clay had appeared for many an one, without participating in his crimes; then why the worse for appearing in Burr's case? Did they want more coaxing? then nobody better or easier than Mr. Clay could give it to them. But if, indeed, Mr. Clay was censured only by his *enemies*, and these were confined to the *Federalists*, they were, I apprehend, not convinced by his speech; and the rest (nine-tenths, or ninety-nine hundredths) needed no speech but an assertion that their orator had measured beards with Mr. Jefferson before he had left Washington City, in order to fraternize as before; and so he was forgiven; innocent soul!

Says the Biography: "The shameless calumny fell crumbling from his name, like filth thrown from the hands of a clown against the columns of a magnificent edifice." Now, the calumny was, *that he, being a member of the Legislature, had countenanced, supported and defended Burr, knowing—unavoidably knowing—him to be engaged in the illicit enterprise charged on him by the attorney for the United States.* THIS WAS TRUE! Such was the charge, not stated, but intended to be apologized for in the Biography; and which is so poetically described as falling from him, in the summer of 1807, after sticking from 1806. But then the LION shook himself, and, to keep up the figure, the filth and vermin contracted in his lair fell from the superb crest of the mighty beast, and left him as clean as if he had been washed in popular tears.

In this effort of the biographer to absterse his subject from the Burr stain, he has passed in careful silence over the conduct of Mr. Clay in reference to Sebastian and Innes, convicted before his eyes (and he no less a member of the Legislature) of intrigues with Spain, as already shown. But where no apology could suffice, and as no repentance had taken place, the path of prudence was through the cave of silence. My reconciliation with Mr. Clay was founded on the idea that he had seen and repented his folly; of that I am undeceived by his Biography. While that, with other views, furnish the damning evidence of his conscious guilt. As thus (p. 36), Mr. Clay is now exhibited in the Senate of the United States. Says the book: "Up to the time when the vote on the bridge bill was about to be taken, he had not given the slightest intimation of his opinions on the subject. His first speech was upon that bill. An eloquent and most praised effort, wherein he gave a powerful and triumphant vindication of the policy of authorizing the erection of the bridge. His speech was of far more value than his single vote, for he carried with him a majority of the members of the Senate."

This is to show his importance by the effect of his speech. On the 37th page is to be seen what was the conduct of Mr. Clay where Mr. Burr might be affected. This is important. Says the book: "The most important question that was discussed in the Senate during the Congressional session related to the suspension of the act of *habeas corpus*. The suspension was moved in order to give the Executive (Mr. Jefferson) the power of arresting Col. Burr, if necessary, and keeping him in confinement, without being delayed by the dilatory operations of the law. On this subject Mr. Clay did not speak. And why? I would ask. The answer is in the book: "Having been Col. Burr's counsel he deemed it inadvisable to take part in the discussion," &c. "And the suspension of the law was voted with great unanimity." The House of Representatives refused its concurrence, and the liberties of the people were saved. But here we are presented with Mr. Clay, the Senator, the orator, the popular—shall I say demagogue? No!—statesman!—*paralyzed* and DUMB in a case of the *first consequence to public liberty*, because he had been the counsel for Col. Burr, the culprit in question. Can stronger proof of the total impropriety of Mr. Clay's conduct toward Col. Burr be exhibited? Impossible. He had just been a member of the Kentucky Legislature. Could he do anything there which might effect Col. Burr? Certainly not. An act of that body was deemed necessary, and passed, to "prevent unlawful warlike enterprises," having also regard to Col. Burr. It would be in vain to inquire of the part acted by Mr. Clay. Look back to his conduct in relation to Burr, Sebastian and Innes; it was consistent, but was that of a political prostitute! His services to these men preceded every duty he really owed to his country as a legislator and a counselor.

I have now corrected the Biography of Mr. Clay so far as I have thought it my duty. The facts are before the public; the event is with the people,

October, 1831.

H. MARSHALL.

Much of this language is harsh, but Mr. Marshall, at that time, was not alone in applying such, or even stronger terms to Mr. Clay, in criticism of his public acts. Happily, with the lapse of years all animosities have died away, and the American people retain now toward "the great commoner" none but the sincerest feelings of admiration and esteem. Humphrey Marshall, in his time, however, was not the man to rest quietly under what he considered unjust reflections or imputations upon himself; and so, at the ripe age of seventy-two years he turned upon

Clay and Prentice with a virility and sprightliness of style which showed that his pen had not forgot its cunning.

During the time he remained in the Legislature Mr. Marshall continued his usual bold and fearless course, in no wise deterred from doing his duty, as he saw it, by the fact that he stood alone, or almost alone, politically; and it is certain that he secured the enactment of some valuable legislation. As he was the only pronounced Federalist in the body his vote was often the only one recorded for, or against a measure, as the case might be, thus maintaining his well-deserved reputation for independence of character. The *Gazette* for March 13, 1810, contains the following from its Frankfort correspondent: "The resolutions introduced into the House of Representatives * * * * by Wm. T. Barry, relative to the rupture between the United States and Jackson, were called up. They expressed most entire disapprobation and hearty contempt for the conduct of *Jackson*, and the most unqualified and cordial approbation of the conduct of our Executive, with the most sacred pledges by way of *backer*; and what did me good, even to the core of my heart, was the prompt and undivided *voice* which was given in favor of the resolutions—but to account for this perfect *unanimity* and *concord*, and by way of apology for the individual, I must inform you that Humphrey Marshall was not in the house when the resolutions were acted on."

Mr. Marshall was a candidate for re-election to the Legislature from Franklin county in 1810, but was defeated by a small majority by Mr. George Adams. The *Kentucky Gazette* of August 14, 1810, says: "We congratulate the Republican citizens of Franklin county on their triumph at the late election. The number of Mr. Adams's majority being 76, ought not to increase friend Humphrey's dislike to the year '76 at all, as we are well-assured a number more could have been added to it. The firm stand made against Federalism in this (Fayette) county, also reflects much credit on the independence and steadiness of the voters. After an electioneering campaign of three or four months, of unequalled perseverance and exertion, J. H. Daveiss, Esq., (the Federal candidate) obtained 224 votes out of between two and three thousand.

And this number, too, at the expense and trouble of attending all the *meetings, musters, barbecues*, and public gatherings of every kind in the country; besides *visits* and written *circulars* to almost every private family; and of *stump-speeches* many a score. Alas! that all the men of talents should be doomed to stay at home! *These cursed republics!* how illy suited 'to men above the dull pursuits of civil life!'"

Whether Mr. Marshall was a candidate for the Legislature in 1811 and 1812, or not, is not now known; but it is a fact that he was a candidate in 1813, when Mr. John Arnold defeated him by a small majority.

He made his next and last appearance in public life in 1823, during the Old Court and New Court excitement, being a very ardent Old Court partisan. Gen. Martin D. Hardin, who had been elected in August of that year, died before the assembling of the Legislature, and Mr. Marshall was elected in his place, after a very close and exciting canvass. Says the *Kentucky Reporter* for November 3, 1823: "Humphrey Marshall has been elected a member of the Legislature from Franklin and Owen counties, in the place of Gen. M. D. Hardin, deceased; by a majority of three votes over Mr. Jephtha Dudley. Mr. Dudley belongs to the non-descript party called 'Judge-Breakers.'"

Mr. Marshall served this term with his usual distinguished ability, but did not again offer for office, though, at that period, he enjoyed a larger portion of popularity, on account of his Old Court and "Anti-Relief" views, than had been accorded him for many years before.



As a Journalist.

Humphrey Marshall's ready and able pen furnished many articles to the pioneer newspapers of Kentucky. In the first days of the Commonwealth newspaper "communications," as they are called, were even more in vogue than they are at the present time. Sometimes they were four or five columns long, small as the weekly publications of the day were; and it was no infrequent thing for the newspapers of those times to be almost entirely filled with communications from their subscribers. Humphrey Marshall did his share of this kind of work, and the files of

the old Lexington papers, still preserved in the Lexington library have many articles from his pen, published over his name or pseudonym. These articles were generally upon the subjects then absorbing the attention of Kentuckians, and it is very evident from a perusal of them that he afterwards utilized them largely in preparing his history of Kentucky.

It was not, however, until June 26th, 1810, that he became an editor in his own proper person. On that date he issued the first number of the *American Republic*, a small quarto of five columns to the page. The *Republic* was the only Federalist paper in the State, and its numerous Democratic (or, as they were then called, "Republcan") contemporaries soon dubbed it "*The Snake*." Acting upon this suggestion, Mr. Marshall then added to the heading of the paper a wood-cut of a rattlesnake coiled ready to strike, with the motto—

Tread Not on Me. (Cut of Snake.) For My Country.

In a subsequent number he gave the following poetical description of his rattlesnake device :

"This noble foe, so terrible to sight,
Though armed with death, he ne'er provokes the fight.
Stern, yet magnanimous, he forms his den
Far from the noisy, dangerous haunts of men.
The unconscious foot that presses him, he spares,
And what was harmless meant, forgiving bears ;
But dare his life, behold he rises brave
To guard that being bounteous nature gave !"

On April 19, 1811, the editor states, in a dunning notice, that the *Republic* had started with but a small number of subscribers, which had increased, up to that date, to nearly eight hundred. That was a very creditable showing, indeed, for the times, and is probably higher than the average circulation of Kentucky weeklies of the present day.

In the course of a year or two the name of the *American Republic* was changed to *The Harbinger*, which flourished under Mr. Marshall's editorial guidance until the year 1825, when he sold it to a lawyer lately come from Tennessee, named Patrick H. Darby, and retired permanently

from the newspaper business. Mr. Darby immediately changed the name of the paper from *Harbinger* to *Constitutional Advocate*.

Humphrey Marshall's abilities as an editor were of the first order, and he ranked as high as a writer, perhaps, as any journalist the State ever produced. So far as is known, but few copies of his papers have survived the ravages of "the mordant tooth of time." None are now known to be in existence, except those in the library of Col. R. T. Durrett, of Louisville, Ky.,—a library which may be called the Mecca to which every literary treasure and rarity affecting Kentucky or its history infallibly finds its way.

The late Col. S. I. M. Major, of Frankfort, Ky., in a history of the Frankfort press, written a short time before his death, gave a very interesting account, though a brief one, of Mr. Marshall's career as a journalist, from which the following is extracted :

"From the remains of the first organ of Federalism in Kentucky [*The Western World*] sprang some lively ephemera, sustained in their brief career by the purse and pen of Old Humphrey Marshall, who persisted in the Quixotic effort to inoculate the Capital and the State with his peculiar Federal views in politics and his infidel views in religion. In 1810 he established the *American Republic*. This was succeeded by the *Harbinger*, and this latter by the *Constitutional Advocate*, founded about the beginning of the Court question, and gaining a foothold in public estimation which its predecessors failed to obtain, by reason of its zealous advocacy of Old Court principles. Marshall transferred this last paper to the notorious Patrick H. Darby. * * * * The files of these papers have probably been consigned to the tomb of the Capulets. I do not remember to have seen a copy of either. The oldest inhabitants remember nothing of the *Republic* and *Harbinger* except that their title-heads were adorned with a rough wood cut of a rattlesnake coiled, with the motto: 'Wake Snakes.' It was by most persons of that day considered either moral or political contamination—perhaps both—to be found with a copy in possession, though we can well believe that from the promptings of natural curiosity, or of 'Old Nick,' many read the productions of such an able pen with more than ordinary enjoyment, especially when reporters were not about.

* * * * "Patrick H. Darby was a lawyer from Tennessee who settled in Frankfort about 1821-22, and succeeded Marshall as editor of the *Advocate*. He is reported as a noisy and mischief-making demagogue, entering with more zeal than brains into the lively canvasses of the

Court times as both stumper and penny-a-liner. In the hot contest of 1825, in Franklin county, for a seat in the Legislature, when John J. Crittenden led the Old Court party and Solomon P. Sharpe championed the New Court, resulting in a dead heat (both Sharpe and Crittenden being elected, as the county was entitled to 'two Representatives, while their respective co-adjutors upon the several tickets were left out) Darby disgusted almost every one by his coarse assaults upon the private life of Sharpe, made not only in the columns of the *Advocate*, but upon the stump. The shocking assassination of Sharpe on the morning of the meeting of the Assembly, when the real perpetrator was unknown and unsuspected—when the victim was at the zenith of his popularity, and was not supposed to have but the one calumniator and enemy in the community, together with Darby's zealous efforts to fix the guilt upon some one else, led to a deep-seated belief that he was an accomplice in the horrid crime. This impression was heightened by charges founded on circumstantial evidence adduced in public print by the widow of Sharpe. Darby's efforts, however, to turn suspicion from himself led to the detection and conviction of the real murderer; but he himself was unfortunate to the last. His testimony against Beauchamp was a maze of tall and varied swearing; and the latter, on his way to the gallows, refused the appeals of the editor to acquit him of complicity in the murder. Darby found it a relief to his pent-up feelings to doff the editorial garments in the summer of 1826, and try the more genial atmosphere of a State where he was not so notorious. Thus died the *Constitutional Advocate*, the last of the *World's* unacclimated progeny; since which time unadulterated Federalism found no organ until the late civil war 'waked snakes' again, and turned Jefferson and the Resolutions of 1798 upside down in Kentucky."

It may well be imagined that Mr. Marshall's bold pen involved him in many journalistic frays, remains of which are still to be seen in the files of the newspapers of the times which have survived. Their chief interest is lost, however, because one can not see his rejoinders in these tilts. As early as 1811 some of his contemporaries dubbed his paper (then the *American Republic*) "The Snake," which doubtless furnished the suggestion of the celebrated "wake snake" design which adorned the title line of the *Harbinger* a few years later. Nor did he escape other unpleasant episodes, some of which still attend the journalistic profession. In 1811, when an editor of not more than a year's standing, he was challenged to mortal combat by Richard M. Johnson. The cor-

respondence, which explains itself, is here reproduced for the first time, as is believed :

FRANKFORT, KY., May 29, 1811.

Mr. Marshall is requested to appoint his friend to make arrangements with my friend, Mr. Brown, for a personal interview. For the cause of which request, Mr. Marshall is referred to various personal reflections upon myself, my father, and my family, as made by him in "The American Republic."

RH. M. JOHNSON.

FRANKFORT, KY., May 29, 1811.

SIR.—A moment's reflection, after perusing the note handed me by you from Rh. M. Johnson, determined the course I would take. I am requested by Mr. Johnson to appoint a friend to make arrangements with you for a personal interview; for the cause of which request I am referred to various personal reflections upon himself, his father, and family made by me in the American Republic. As the agent and champion of the family Mr. Johnson has not explained or apologized to me for the malignant misrepresentations and personal abuse which I have received from them directly or indirectly, through the "Argus," which will be found to have preceded those things for which, as I must suppose, this attempt is made to call me to account. If Mr. Johnson did not know it, he will not be ignorant hereafter that self-defense and the severest retaliation in my power are among the first rules of my morality; and he or they who assault me should anticipate a resistance to the extent of my capacity. Nor will I ever hold myself responsible in any other way for what shall proceed from me in such a case. As the editor of a public paper I have rights and duties which are not to be confounded with my personal identity. If Mr. Johnson's object is a duel—which I shall suppose—he should have foreseen, if he did not, that there are inequalities between us which will forever render such a resort nugatory; unless I would consent, for his gratification, to sacrifice the most evident propriety—which he has no right to expect from me. Was not this the case, there are special considerations apparent in the Argus, which will render this late resort to chivalry unworthy of my notice. If Mr. Johnson desires that there should be a cessation of remarks on himself and family, as connected with their publications in the Argus, he ought to know how to attain it. Until the cause ceases the effect will flow. As a public character, a speech-maker, and as a writer of circulars, he is forever within the purview of an editor of a public paper; I

am such an editor. In these observations, which I have chosen to address to you for Mr. Johnson's information, he will perceive what is left to him. With esteem,

Your Humble Servant,

H. MARSHALL.

To Wm. Brown, Esq.

Colonel Major was mistaken when he stated in his sketch that Mr. Marshall was editor of the *Constitutional Advocate*, and sold it to Darby, and Mr. Perrin perpetuated the same error in "The Pioneer Press of Kentucky." He sold the *Harbinger* to Darby, who at once changed the name to *Constitutional Advocate*; and, notwithstanding the complimentary notice he made of Mr. Marshall in his first issue, Darby soon became his bitter enemy, and the old Roman might have looked for countenance and praise anywhere else on earth sooner than in the columns of the *Constitutional Advocate*.

The *Argus* of September 21, 1825, quoting from Mr. Darby's salutatory, says :

Patrick H. Darby says: "The subscriber having become the editor and proprietor of the newspaper and printing establishment of the "Harbinger" will continue to publish the same in Frankfort under the name of "*The Constitutional Advocate*." * * * * In receiving this infant institution from the hands of so able an editor and so experienced a politician as Mr. Marshall, the subscriber is not unmindful of the high responsibility with which he stands charged, in the attempt to supply his place in the tribunal of public opinion."

And the *Argus* adds, editorially, in lunging a double-heeled kick at both Mr. Marshall and Mr. Darby :

Mr. Marshall's political friends, we believe, are much more gratified with his retirement than his enemies. The old man has *one virtue* which is very inconvenient to his party, and calculated sadly to thwart their designs. This is candor. He is an *ultra* Federalist himself, and often expressed—what he always felt—an utter contempt for the great mass of the people, whom he, in derision, denominated "the nether end of society." Many of his party do not *feel* the same degree of contempt for the people, and do not express, except in unguarded moments, that which they *do feel*. They were, therefore, fearful that if Mr. Marshall continued at the head of a printing establishment, they would not be able to continue those deceptions on which their power is founded.

Hence their joy at his retirement, while they continued to entertain his principles in different degrees, and eulogize his virtues and his services.

Thus ended, in 1825, Humphrey Marshall's career as a journalist, and, indeed as a public man, for after that time he retired to private life to emerge no more in any public capacity whatever. It has been well said of him that he "was a shining ornament to the Frankfort press, and would compare favorably with the ablest editors, not only of his own time, but of the present, had his time and attention been given regularly to the profession."* Mr. William H. Perrin, in his "Pioneer Press of Kentucky," says of him, that "as a writer he had no equal in the period in which he lived."

But it was not alone as a journalist that Mr. Marshall courted the muse of literature, for it appears from frequent paragraphs in the press of the times that he often wrote poetry. Unfortunately, none of his efforts in this direction appear to have survived. One who handled a pen so vigorously and effectively in prose composition must have succeeded at least fairly well in the field of poesy, especially if satire had been his theme—and we may well suppose that it generally was. One of his poems in especial, which it seems he published in book-form and then suppressed, must have been particularly "rich," judging from the newspaper comments upon it. It was called "The Aliens." The *Kentucky Gazette* (August 13, 1811), in an effort to be funny, or sarcastic, or possibly both at once, says: "We perceive that the renowned Humphrey Marshall, the famous *Allen Poet*, is again under the inspiration of the musès, upon which fact we congratulate all its readers and the whole literary world. In order that he may receive the tribute of applause which is so very eminently due to all the productions of his muse, we propose, in future numbers of our paper to republish his famous poem called THE ALIENS, a copy of which a friend has lately furnished us. The greatest admirer of the ancient poets, upon the revival of literature, did not with more joy fasten upon an ode of Horace, than we did upon this precious monument of American genius and taste, which the modesty of the author snatched from the public before its merits were

* Col. Major's sketch.

generally known. There will now be filled a great void in American literature."

The *Gazette*, however, was not as good as its word. Its files, though complete for some time after the publication of this promise, do not even give a line of "The Aliens."



Marshall's History of Kentucky.

Humphrey Marshall's History of Kentucky is not only "the chief monument remaining to us of his ability as a writer," but it is also the chief monument left to us of his services and career as a public man. It was, in fact, the first real history of the State ever printed.

John Filson published a small work on Kentucky in 1784, the chief merit of which was the excellent map of Kentucky which accompanied it; and even this map would have actually passed into oblivion, as it had already apparently done, but for the efforts and researches of Mr. R. T. Durrett, the founder and President of the Filson Club, who rescued and republished it, thereby incurring a debt of gratitude from Kentuckians which they can never sufficiently repay. The matter in Filson's book, however, with one notable exception, was greatly of the kind which railroad companies now print in their advertising pamphlets to induce people to buy the lands which have been granted them in the West. It may be that Filson wrote his account of Kentucky for the purpose of inducing immigration, at the instigation of some of the owners of large tracts of land in this State. The exception referred to is the alleged autobiography of Daniel Boone, which is the real beauty of the work, and which gained for it very nearly all the literary reputation it ever enjoyed; and which certainly secured for Filson the reprinting of his book in England, France and Germany before the close of the last century. Even the autobiography of Boone has been attributed by many to the pen of Humphrey Marshall; but while it is too sophomorical to be compared with the stately sentences of Marshall, it is still so unlike the other portions of Filson's work as to induce a strong suspicion that it and they were not the work of a single pen.

In 1787 Gilbert Imlay, an officer of the American army who visited

the Western country, wrote a book about it, but his work contained little more about Kentucky than had already been published in Filson's history, which was incorporated bodily into Imlay's. William Littell, a lawyer of Frankfort, also published in 1806 his "Political Transactions," which, while it could hardly be dignified with the name of "A History of Kentucky," preserved much that proved of value to the real historians of the State when they began their work. Mr. Littell stated on oath, also, that he wrote the work for hire at the instance of several persons whom the *Western World* had tried to implicate as associates in the "Spanish conspiracy."

The first edition of Humphrey Marshall's History of Kentucky was printed at Frankfort, in 1812, in one octavo volume of 407 pages. It is perhaps a fact that Marshall, who had since 1801 been almost the football of fate in his political fortunes, unable to longer stand single-handed in defense of his unpopular convictions against the army of able men who opposed him, succumbing at last through sheer impotence, but not in despair, and nursing "the unconquerable will and study of revenge," sat down, when he could no longer stand against them in the political field, to smite them sore in a History of Kentucky. If such was his purpose, he did his work well, for the sting of his pen left poison where it touched, and is felt to this day by the descendants of some of the men who incurred his vengeance. But leaving out of the question the gratification of his own revenge, he wrote a good history of Kentucky—it is a book, in fact, without which the later historians could never have written a satisfactory history of the first years of the State. Nothing seemed too trivial for him to record, if it bore upon the history of Kentucky; and when he treated the main subjects of his work—the Spanish conspiracy and the Burr conspiracy—becoming warmed with his theme his sonorous sentences approached in grandeur the massive style of Gibbon in his imperishable history of later Rome.

In 1824 his work was republished at Frankfort in two octavo volumes of 522 and 524 pages, the first volume being greatly revised; and much of the strong language of the first edition was left out entirely. The grand object of the work was ostensibly the exposure of those public men whom he denounced freely as conspirators with Burr

and the agents of the King of Spain. He probably made some charges upon suspicion which he did not then have the facts to sustain, and did it fearlessly, for he was without fear; but he evidently earnestly believed, himself, every charge that he made. The keenness of his perception was verified, years after he was laid in his grave, by the finding in the archives of Spain, at Madrid, by Hon. Charles Gayarre, the historian of Louisiana, of documents which established beyond a doubt the guilt of some of the parties whom "Old Humphrey" had fearlessly charged with treasonably conspiring against their country with the minions of Spain, when he had not the proofs at hand to establish his grave and serious imputations.

Except for Humphrey Marshall this portion of the history of Kentucky would never have been written, for there was no other man of his time who had the courage and the nerve to write it. Even later historians touch lightly upon it, as though afraid "to call a spade a spade." Old Humphrey had none of this squeamishness. Men had ruthlessly overborne him, and tried to crush him to powder—he, a patriot, and a man of sincere convictions, incapable of being a demagogue or of becoming mentally untrue to himself—and when he saw a flaw in the armor of any of these men he relentlessly struck—and struck home!

Marshall's History of Kentucky has become almost as rare as Filson's, and it is next to impossible to secure a complete copy, especially of the two volume edition of 1824. It seems strange indeed that so noted a work should be so scarce and so hard to lay hands on less than seventy years after its publication. Though there are several theories to account for this fact, probably the correct one is that the edition was originally small, only a thousand copies having been printed, and of these a very large number must have naturally disappeared in the course of sixty or seventy years. It has been stated that some people have made it almost a life business to hunt out and destroy all the copies of this book they could find. The few copies which have survived are naturally preserved with the most jealous care, not only on account of the rarity of the work, but more, perhaps, on account of its great merit. In the course of time many copies of the history have been in the Lexington library, but none remained there permanently until a few years ago Rev. L. B. Woolfolk

donated to it a copy of the two volume edition of 1824, laying the strict injunction, however, as the imperative condition of the gift, that it should be kept under lock and key, never be taken out of the library building, and that it should be read, when read at all, under the immediate espionage of the librarian. These conditions have served to preserve it intact in the library. This writer tried in every direction to buy the work, but could nowhere hear of a copy for sale; nor did he, indeed, hear of more than a dozen copies in existence, at all. Finally, he was presented by Mr. W. H. Murray, of Frankfort, who has for many years resided at Humphrey Marshall's old home, "Glenwillis," with a sadly-mutilated copy of the one volume edition of 1812, which Mr. Marshall had personally presented to Mr. Murray's aunt many years ago.

Collins states that the history was savagely attacked on its appearance by the newspapers of the day. The writer of this sketch has examined the files of almost every paper published in Kentucky in 1812, when the first edition of the history appeared, as well as the files of various papers published in the State in 1824, when the second edition was given to the world, and failed to find any mention of the work in any of them, with one exception. It appears that in 1825 Patrick H. Darby attacked the history quite viciously in the *Constitutional Advocate*, and then refused Mr. Marshall the liberty of his columns for a reply to the criticism. No copy of that paper is now known to be in existence, so of course the criticism itself is lost, but its tenor may be judged by the brief allusions to it in contemporary prints, and by Mr. Marshall's reply to it, which is still preserved in the files of the *Argus*. This paper (October 26, 1825) says: *

Poor Bellisarius! The 'venerable' Humphrey Marshall, like the old Roman General, can not now get an *obolus* from the men whom he has so zealously and faithfully served. Darby promised the public a review of his history of Kentucky, and Marshall solicited the privilege of replying to it in the *Advocate*, which was denied. Marshall then applied to the editors of the *Commentator* for the privilege, and *Dana* denied it. Where the poor old veteran will go next we know not.

* * * * *

* Amos Kendall was at that time editor of the *Argus*.

Since the foregoing article was written, we have received the following letter from Mr. Marshall, inclosing a communication to the *Argus*, addressed to Patrick H. Darby :

To the Editors of the Argus of Western America.

GENTLEMEN :—Under present circumstances I accompany this address with my own name, and which I wish to appear in your next paper, lest the *good friend* to whose continued attacks it is a reply should give so many blows unreturned as to think his *own impunity* really secured by his *editorial caution*. There is so much before the public that more explanation seems unnecessary. Should you make the publication, the condition is at your own option—if free of expence it will confer an obligation, as it will also render a service in the line of your business ; if you make a charge it shall be paid. In short, be the whole responsibility mine.

Yours with due respect,

H. MARSHALL.

Mr. Marshall's article, three columns in length, was published in the *Argus* of November 2, 1825 ; and from it is extracted that portion which seems most pertinent to the purposes of this work ; viz :

* * * Why mingle with it the *affectation of regret* that I had written the history ? Should not the country have a history ? Who would have written one ? Who is writing one now ? More than ten years have elapsed since the history was commenced, but who is not governed by circumstances ? Lately it has grown into two volumes—it requires a *third* to complete the design. It will be admitted that one of a different character might have been written, and may yet be written, in which *intriguers with foreigners* may be justified, and the absurd idea propagated that such things *promote the duration of republics*, when those who move at their head are concerned as agents. For this doctrine I acknowledge myself your debtor. ' My own is pretty clearly expressed in the history. Were that in the hands of the public, even to the extent of the edition published (1000 copies), it could then speak for itself, and be fairly criticised or travestied according to the capacity and disposition of the critic."

In a subsequent number of the *Argus* a correspondent ("Randolph") in writing about Darby says : "And by the way, Humphrey Marshall * * * and his History are to be laid prostrate in the dust. The promised effort was made, and what was the result of those weighty powers ? Humphrey, with a single stroke of his quill, silenced all his batteries, and laid poor Pat flat upon his back in the mud."

Comment on the History.

Subsequent historians of Kentucky, and others, have commented on Marshall's History of Kentucky as follows :

Col. Major says :

"Of that book I must be allowed to say a word. Each time that I have read it, at intervals of years and with increased interest, it has impressed me with an extraordinary characteristic, that although evidently written out of the memory of one man, with little or no evidence that documents, then easy of access, were consulted, it remains to-day ahead of all rivals both in accuracy and fulness of detail. The prejudices of the defeated and revengeful politician sometimes get the better of the judgment of the sober historian in its picturesquely written pages, yet I must be allowed to display my powers of criticism when I say that I would not give old Humphrey as the chronicler of my native State for all the Littells, Butlers, McClungs, *et id omne genus*, who have succeeded in rendering the history of Kentucky so intensely dull as to deter any but an 'old mortality' from pursuing what, by rights, ought to be a delightful study."

Collins' History of Kentucky, Vol. II., page 640, says:

"Humphrey Marshall's was for thirty years the most prominent of Kentuckian histories—prominent because of his high position in public life, and as a lawyer and editor, and because until 1834 his was the only work generally known and quoted as a history of Kentucky, and the one most extensively known until 1847. It was first published at Frankfort in 1812, 407 pp., 8vo., entitled: 'The History of Kentucky, including an account of the Discovery, Settlement, Progressive Improvement, Political and Military Events and Present State of the Country.' A second volume was promised, but was not published until 1824; when the work was issued in two volumes, with the first volume much amended and revised, 522 and 524 pp., 8vo. The work was very able and very interesting; but was often partisan, bitter, and prejudiced, and as such was savagely attacked by the newspapers of the day. One of the most remarkable passages in the 1812 edition was this, from page 181 :

'Already had the flattery of the Minister, and the thousand seductive blandishments of Paris, gained over to his purpose that singular composition of formal gaiety, of sprightly gravity, of grave wit, of borrowed learning, of vicious morality, of patriotic treachery, of political folly, of casuistical sagacity and republican voluptuousness—Dr. Franklin.' * * *

"This language was greatly modified in the 1824 edition, pages 156-7. Dr. Mann Butler, in the preface to his history in 1834, felt bound to explain the extraordinary differences between his own statements of 'the complexion of many events, and the character of most of the early statesmen of Kentucky' and those of Mr. Marshall; and to express

'His solemn conviction that every man and party of men who came into collision with Mr. Marshall, or his friends, in the exciting and exasperating scenes of Kentucky story, were, essentially and profoundly misrepresented by him—however unintentionally and insensibly it may have been done. The contentions between Mr. Marshall and his competitors for public honors were too fierce to admit of justice to the character of either in each others representations. These enmities transformed his history into a *border feud*, recorded with all the embittered feelings of a chieftain of the marches * * * * To have been opposed to him in the political struggles of Kentucky seems to have entailed on the actors a sentence of conspiracy and every dishonorable treachery. Isaac Shelby, Harry Innes, James Wilkinson, John Brown and his brother, James Brown, George Nicholas, William Murray, Thomas Todd and John Breckinridge, were thus unjustly denounced by Mr. Marshall.' * * *

This is strong language, used in 1834. Dr. Butler does not deny Mr. Marshall what all conceded who knew him—the possession of brilliant talents and commanding force of character. He was a Federalist, held to all the principles and measures of that party to their fullest extent, and as such was elected to the United States Senate over John Breckinridge for six years, 1795-1801. During his term in the Senate some public men of Kentucky bitterly pursued him; and he, years afterwards, as bitterly pursued them.

Allen says (History of Kentucky, p. 259) :

The first history of Kentucky ever published was by Mr. Marshall. His personal prejudices are often interlarded in the work, which rendered it objectionable to many, but, taken altogether, it was a good and valuable work, and one which I read with great pleasure soon after its publication in 1824 or 1825, but have not been able to secure one since my present undertaking to write a similar work commenced. I could, doubtless, have derived great advantage from its reperusal.

Smith's History of Kentucky (Page X.) alluding to the one volume edition of 1812 says :

This work was published by Mr. Marshall as the first of two volumes, the second of which never appeared. In 1824 he published at

Frankfort a rewritten and enlarged work in two volumes, 8vo pp. 474 and 524, which was the first elaborate history of the State. He was a Virginian by birth, and came to Kentucky at the early date of 1780. He therefore lived through nearly the entire period about which he wrote; and had it not been for the fierce political conflicts in which he engaged, and the color they gave to the portraits he sketched of opponents, his work would have been accepted by posterity with a credence worthy of its great ability.

Perrin, in the "Pioneer Press of Kentucky," says that Marshall's History is superior to all rivals in literary merit, as well as in accuracy and fulness of detail. E. D. Warfield, in "The Kentucky Resolutions of 1798," speaking of Mr. Marshall, says: "He was now (1798) politically dead in Kentucky, but he took a sharp-tongued revenge on the times and the leaders in after years in his able but partisan history of Kentucky."

COL. JOHN MASON BROWN'S "POLITICAL BEGINNINGS OF KENTUCKY."

A foot-note on page 160, "Political Beginnings," says: "The quotations by Marshall in the eighth chapter of his first edition (*History of Kentucky*, edition of 1812, Vol. 1, page 341, *et seq.*) disclose the unusual attempt by an author to use his own anonymous newspaper communications, as historical proof of his own statements as a historian."

In the volume and on the page cited, Mr. Marshall's exact words preceding the insertion of the anonymous newspaper communications in question, are these: "As the examination and exposure of the real objects of this letter, by AN OBSERVER, are believed to have given a proper direction to public opinion, and will have the same good effect in all times to come, we shall insert them as disquisitions which have our approbation, and which were published in Frankfort, where Mr. Brown resided, without refutation or even contradiction."

"An Observer" was the pseudonym under which Mr. Marshall wrote for *The Western World*, and the letter referred to above as having its real objects examined and exposed by "An Observer" was the letter of July 10, 1788, from Hon. John Brown to Judge George Muter. It does not

appear that "An Observer's" letters were copied by Mr. Marshall in his history "as historical proof of his own statements as a historian." Mr. Marshall's words in this connection are plain, and do not admit of such a construction.

"Political Beginnings," page 199. Referring to an alleged motion by John Brown in the Danville Convention of November, 1788, that the District separate from Virginia and be erected into an independent member of the Union, it is said that it is certainly "strange that Marshall should not allude to it while rehearsing the conduct of his enemy."

Mr. Marshall would certainly be inexcusable for omitting this motion from the account of the convention given in his history—if any such motion had been made by John Brown. But he made no motion of the kind; as is shown by Littell, the very authority to whom his grandson, Col. John Mason Brown, appealed to show that he *did*. Marshall's History, in its account of the convention, is sustained by the official minutes of the convention.

Page 201, the author of "Political Beginnings" again criticises Marshall for omitting to mention that the "Address to the Legislature of Virginia" passed by the November 1788 convention, and printed in his history, was reported by his enemy, Judge Innes.

Judge Innes was entitled to no credit for reporting this address, which was prepared by a committee consisting of Messrs. Edwards, Marshall, Muter, Jouitt, Allin and Wilkinson, all of whom except Jouitt and Wilkinson were of the "Country party." Judge Innes happened to be the chairman of the committee of the whole which considered the address when it was submitted by the committee; and as such it was his bounden duty to report it to the convention (whether he approved it or not) after the committee of the whole had risen. The fact is, Judge Innes did not personally approve the address.

The authorship of this address probably belongs to Col. Marshall or Judge Muter, since the text appears to be in line with Judge Muter's letter in the *Gazette* of October 15th, 1788; which letter the author of "Political Beginnings" (page 193) thinks was inspired or "thought out" by Col. Marshall. Judge Innes could not rightfully claim any credit in

connection with this address, and he was not wronged, in this respect, at least, by Marshall's History of Kentucky.

Quite a number of pages in "The Political Beginnings of Kentucky" are devoted to the task of proving that Hon. John Brown did not utter in the convention of November, 1788, the words attributed to him in Marshall's History, viz:

"That he did not consider himself at liberty to disclose what had passed in private conferences between the Spanish Minister, Mr. Gar-doqui, and himself; but this much in general he would venture to inform the convention, that, *provided we are unanimous, everything we could wish for is within our reach.*"

This passage is not in the official minutes of the proceedings of the convention, as they were published at the time, or as they have come down to us in the original manuscript. There were many ways in which the passage might, without wrongful intent, have been omitted from the official minutes; which, as published, are briefly and tersely stated, and do not appear to note any speeches or remarks that were made by any member, on any question, but confine themselves strictly to the official action of the convention.

As to Mr. Brown's short speech, just quoted, it has always been understood that it is an excerpt from the notes of the proceedings of the convention taken down by Col. Thomas Marshall for his own information, as was his habit upon all such occasions, and used afterwards in one of his letters to Washington. Humphrey Marshall gave it as an "accurate quotation," as stated by Hon. John Mason Brown; but he certainly had a right to do so. It was published in the *Western World* in 1806, many years before Hon. John Brown's death, and was repeatedly published afterwards, yet it is nowhere shown or attempted to be shown that Mr. Brown ever explicitly disclaimed the language.

Page 204, "Political Beginnings," it is stated that Humphrey Marshall "was not a member of either of the conventions of 1788, nor did he profess to have personal knowledge of what took place at its sessions." Also, that in his account of the convention he cites no authority other than such extracts of the journals as were published in the *Kentucky Gazette*.

He does not cite even that. In the preface to his history he says: "It has neither note, reference or errata." He probably believed that he was, in the main, stating facts which were well known to his contemporaries, or should be. And Smith's History of Kentucky, page 285, says: * * * * "The Seventh Convention met at Danville in November, 1788. In October previous there were elected as members of this body, Messrs. Humphrey and Thomas Marshall, Muter, Crockett," &c., &c.

The devotion of so much space in "The Political Beginnings of Kentucky" to a demonstration of the fact that so many witnesses in *Innes vs. Street*, and *Innes vs. Marshall* did not testify that John Brown used the words stated, appears a work of supererogation. It should first be shown (which is nowhere done) that the question was put to them; and even then, after the lapse of twenty-five years, the memory of witnesses as to the language used by Mr. Brown in his speech at the convention (for he did make one) might not be reliable. Moreover, John Brown was not a party to either of these suits, and any testimony elicited in them toward the clearing of his record must have been lugged in by the shoulders. It is true that Humphrey Marshall attacked John Brown in his history and elsewhere more violently than he ever attacked Judge Innes, but Mr. Brown never sought reparation in a suit at law for defamation of character.

"Political Beginnings," page 201, referring in a foot note to William Littell's "Political Transactions," &c., says: "The book was avowedly based on documentary evidence furnished by Innes and Brown."

Littell's "Political Transactions," page 42, says: "This communication [Wilkinson's address to the Intendant of Louisiana] brought to recollection information received by the president of the convention on the same subject in a letter written by John Brown, while in Congress, after the application of Kentucky to that body had been defeated, as hereinbefore mentioned. A motion was then made that the president request Mr. Brown (who was then a member of the convention) to make such communication on the subject as he should think proper. Mr. Brown then stated in a concise manner the substance of what he had written to Col. McDowell. But in doing this he merely made a naked statement of the conversation, without recommending the adoption of

any measures in consequence of it, or suggesting a single sentiment of approbation."

It is unfortunate for history that Littell omitted to give the *words* used in this speech, which might easily have been done, as it was avowedly "concise" and "naked." So far as his *description* of it goes, it is not incompatible with the statement quoted by Humphrey Marshall as having been made by Brown.

Littell says further in regard to this matter (page 64): "But in the convention of November, 1788, Mr. Brown made a *public* communication of his conferences with Gardoque in the presence of honest simplicity, wary jealousy, and suspicious duplicity—in the hearing of confidential friends and insinuating hypocrites, of open rivals and secret enemies."

Neither the witnesses in Innes vs. Street and Innes vs. Marshall, nor even the official minutes of the convention made reference to this "open communication" by Mr. Brown in the convention. But as the fact is printed in a book "avowedly based on documentary evidence furnished by Innes and Brown," we must believe that it was made, and if so, Marshall had at least some basis for the statement in his history.

Littell, referring twice in his book to this matter, in neither instance states the words which Mr. Brown claimed to have used; nor does he, in either instance, speaking as the mouthpiece of Mr. Brown, deny the words attributed to him in Marshall's History, which had then already been published in the *Western World* in nearly, if not exactly, the same form in which they afterwards appeared in the history.

This much, it is believed, it is not inappropriate to say in defense of Mr. Marshall's integrity and reliability as a historian upon a point where both his integrity and his reliability as such have been questioned.

It will thus be seen that ability is conceded to Mr. Marshall, and that partisanship is also charged, by all. While his partisanship is so clearly apparent, being in fact a repetition from one historian to another of the hue and cry of a century ago, it seems impossible for any of these gentlemen to detect any tinge or color of partisanship in the actions of the men who unscrupulously, by every possible

means, destroyed to a considerable extent the influence and capacity for public good of so great and so honorable a man as Humphrey Marshall. Nor does the fact seem ever to have entered into the comprehension, not only of the historians, but of the public generally, that those who have attempted to palliate or condone the conduct of treasonable conspirators are equally culpable of the charge of partisanship as is Humphrey Marshall, whose partisanship consisted in denouncing it.

In this connection it is not improper, perhaps, to give such extracts from the prefaces of the two editions of the history as set forth the reasons alleged by Mr. Marshall himself for the production of the work, as well as his own statement of the motives which actuated him.

He says in the preface to the edition of 1812 :

It is now thirty-seven years since the first permanent settlements were made in Kentucky. Many of the early adventurers and first settlers have disappeared by the ordinary operations of nature or the incidents of Indian hostility ; and others best acquainted with its origin, rise, and progress of its improvements, verging fast to the silent grave. Facts and circumstances which may now be attested by the living, in a few years could only be reported upon the faith of tradition. It is always desirable that the historian should be able to ascend to the sources of evidence, and thence to deduce his details. An important advantage which a history of Kentucky, now written, will have over one that should be deferred for a number of years, is that its narrative may be attested or corrected by LIVING WITNESSES.

Being myself a resident of Kentucky for more than thirty years, and having occasion to witness or to be well-informed of passing events ; considering that it may be useful for the present and future ages to perpetuate the memory of the most important of those events ; and not knowing that any other individual with the same means of information has it in contemplation to write a history of Kentucky, I have determined, with my feeble but best abilities, *to present my countrymen with one*, which may be characterized topographical, biographical, political, civil and military. These topics are, it is believed, sufficiently copious to embrace the great objects of history, and to admit of all that variety and detail which constitute the amusement and the utility of historical composition. * * * *

To those who have been accustomed to read the histories of ancient, long-existing, or great and populous empires, the history of Kentucky for the space of thirty-seven years only may seem a subject equally

unworthy of the author and the reader. But when we reflect that the little all of one man is as dear to him as the multiplied treasures of another, we may reasonably expect that, to the people of Kentucky, at least, the history of their own country will be an object of no common interest or faint solicitude.

How far the history about to be offered to them will answer their expectations, meet their wishes, or gratify their love of country, will depend essentially on the materials employed, as well as on the skill and judgment of the workman. When the author turns his attention to the ancient republics of Greece and Rome, or contemplates the modern empires of the world, his mind is filled with a crowd of interesting, important and brilliant figures; the investigation and display of which would give animation to genius, sublimity to thought, and eloquence to style. * * * * But Kentucky! brought forth in obscurity, lapped in simple industry, raised in peace after a few predatory alarms and simple invasions of savages,—what has she in common with the countries just reviewed? What splendid subjects for history does her short period of existence display? How shall the historian fill his empty page? How shall he give interest to the narrative? How shall he attract attention? How reward his reader?

Cease, inconsiderate enquirer, nor think the field barren which has produced an independent State encircled in the American Union. Deem not the subject destitute of interest which involves the birth and infancy of a growing nation which may justly claim a high destiny in the Federal galaxy of North American constellations. Nor has Kentucky been without her wars, revolutions, conspiracies. She, too, has had her generals, statesmen, patriots—and traitors!!!

* * * * Kentucky has her moral, religious and political character. Themes worthy the laborious investigation of the statesmen, and the faithful record of the historian. These shall receive my most sedulous attention in the production of the following work.

The preface to the edition of 1812 was reproduced in the edition of 1834, which contained, also, a new preface, from which the following extracts have been made:

* * * * Believing, nevertheless, that the motive with which anything is done must always make an essential constituent of its merit, I shall not hesitate to say that PUBLIC UTILITY has been the predominant object of my labor. * * * *

What popular favorite could bear an examination of his political conduct for twenty years past? Suppose one, the least exceptionable,

selected—his course retraced—his measures scrutinized—his motives developed—his tergiversations noted—his inconsistencies set in array against him—his pretensions, feints and deceptions, as by him played off upon the people themselves, shown—the general selfishness of his patriotism duly exposed: to most honest men who would examine the portrait it would be repulsive. What, then, must a faithful delineation be of those who have not the ground-work of a good moral character, and hardly a virtue with which to begin the picture. Consider what that history would be which should collect and display the transactions of such men to public view. Not that I have attempted the task. On the contrary, deeming it expedient to decline personal history—since the prevalence of party feelings—although to the generality of the readers of the histories of other countries peculiarly interesting and agreeable; and which might have been made entertaining in this; yet the defect is to be acknowledged in the history of Kentucky.

For this I have sought a compensation to myself in the reflection that individual peace and complacency of mind were left unmolested—and to the reader, that even the utility of the work was enhanced by substituting the results of public deliberation to details of personal occurrences. * * * *

In the composition of the work the materials have been drawn from conversations with the first settlers, my own observations and experience, Burck's History of Virginia, Boone's Narrative of 1784, by Filson; and public documents of various descriptions, to which I have had access.

* * * * In relation to the individuals implicated in the different *intrigues* carried on in Kentucky, their exposure was demanded by every right of justice and every principle of utility. While care has been taken to introduce no name not previously before the public—nor of those which were—has means been used to render any conspicuous against whom the alleged offenses could not be established in the plentitude of historical evidence.

Hence the developments commenced in the first volume have been concluded in the second.

Both editions of Marshall's History of Kentucky were printed in Frankfort; that of 1812 by Henry Gore, and that of 1824 by George Adams. It was evidently the intention to illustrate the first edition, for there is a frontispiece marked "Plate I," which is a very creditable illustration of a party of white men being attacked in a forest by a larger party of Indians. The intention to illustrate, however great in design

it may at first have been, was not carried beyond this single plate; and the second edition has no illustration whatever; and the author boasts that it is even "without foot-note or reference." The binding of both editions is substantial leather; but the typography of each is poor, and the paper poorer. These observations are made because both editions of the work are now so rare that possibly not more than one Kentuckian in a thousand has ever seen either; and the copies now in existence will necessarily grow fewer as the years roll by. It may be added that the punctuation of the work is positively miserable—so much so as to frequently obscure the sense of the text, but whether this is the fault of the author or of the printer, probably can not now be ascertained.

It may also be added that the extreme rarity of the history is considered a good excuse for the copious extracts made from it in this work—extracts which go to show the author's style; and which, owing to the inaccessibility of the history to the general public, may almost be classed as matter culled from original sources.



The Peaceful Close of a Stormy Life.

As has been stated, Mr. Marshall retired permanently from every form of public life, after selling the *Harbinger* to Patrick H. Darby, in 1825. About this time he was paralyzed on one side, and palsied; and about a year previously he had the misfortune to lose his wife, who, though blind for many years, had been a most loving and efficient help-mate, and always his truest and most faithful friend, and wisest adviser.

During the troublous time of the "Old Court" and "New Court" and "Relief" and "Anti-Relief" agitations in Kentucky, marking what was doubtless the most critical era in her career as a Commonwealth, Mr. Marshall was one of the staunchest advocates, and, indeed, most trusted leaders, of the "Old Court" and "Anti-Relief" parties. Both were immensely unpopular for a time, but both triumphed in the end, and the part which Mr. Marshall had taken in behalf of each was not

forgotten by the people, who, generally, regarded him with less prejudice and more veneration through the remainder of his life.

Regarding the "Court" and "Relief" agitations in Kentucky (no account of which is intended to be given in this sketch) it may be said in passing that however much the people may have been divided upon them in the times when the discussion of the issues they involved threatened, almost, to precipitate anarchy—there is but one opinion about them now; and that is that the positions occupied by the "Old Court" and "Anti-Relief" parties were *right*. Thus has the lapse of time and the light of history once more justified and approved the judgment and action of Humphrey Marshall.

After his retirement, the fruitful pen of the old journalist, disputant and historian, appears no more to have vexed the souls of his opponents. From that time on the public prints of the day had but little to say about him, and appear to have had but little, if anything, from his pen, except his criticism, in 1832 of Prentice's "Life of Henry Clay;" when, at the age of seventy-two, his palsied hand again took up the good gray-goose quill with all the force and vigor of former years. Although he was then enfeebled by age and disease, the production itself (a portion of which is given in this work) abundantly shows that the old man's hand had not forgot its cunning, nor his mind lost its powers.

His will, written in 1839, two years before his death, was indited by his own hand, and shows the remarkable retention of his mental vigor; and the chirography itself, although done by a man more than seventy-nine years old, who had been for many years both paralyzed and palsied, is still bold and legible.

Mr. Marshall early became interested in the movement begun in Kentucky for the colonization of the slaves, and was one of the most earnest advocates of that scheme. Although a slave-holder during almost his entire life, slavery was repulsive to him. During his life he manumitted some of his slaves, and at his death the remainder were set free by the terms of his will. That he, professing a belief that slavery was radically and essentially wrong, should continue to be a slave-holder all his days, may appear to constitute at least one inconsistency in a character otherwise thoroughly consistent. But he was not alone in

this respect. His friend, the immortal Washington, was guilty of an exactly similar inconsistency, and so was his great opponent, Henry Clay. It must suffice that his great heart and conscience early discerned the wrong in a community and during a time when the general consensus of public opinion failed to discover and refused to admit any wrong whatever in the fact of slavery. And it is at least some merit and some atonement that Mr. Marshall righted the wrong, so far as he was individually concerned, to some extent during his life, and thoroughly at his death.

After the death of his wife, Mr. Marshall continued for some years at his mansion called "Glenwillis," on the bank of the Kentucky River, about a mile below Frankfort. But, his health failing, he finally left the town of Frankfort, (whose earnest advocate and friend he had always been) and went to live with his son, Judge Thomas A. Marshall, an eminent lawyer, then living in Lexington, where he was a professor of law in the then famous Transylvania University—famous not only throughout America, but in Europe as well.

Here the fading veteran continued to live, passing his few remaining days in peace and tranquility after a most stormy and turbulent career. Some old people of the town still remember him, going in and out among them in those days, placidly and serenely, and always with the long staff which he had carried even when quite a young man. There he was regarded with awe by the younger generations who had sprung up in latter years; and he was looked upon by all with that interest which a romantic career and remarkable character always inspires.

And there, in Lexington, where he had begun his career in Kentucky in 1782, he ended his life on the 3d day of July, 1841, at the ripe age of eighty-one years. The house where he died, at the head of Sixth street, is still standing, and is now (1890) occupied by Mr. Robert McMichael.

Mr. Marshall's remains, according to a request he had made, were carried to Frankfort and interred in the grounds adjacent to the family mansion, "Glenwillis." Those who could not conceive that a man who was so remarkable in life could be less so in death, conceived and circulated the story that, by his own direction, he had been buried

standing upright—a story which it is hardly necessary to say was utterly without truth or foundation, although there are many who yet believe it fully.

Mr. Marshall's wife had died and was buried at what was known as his "Matt Gay Place," in Woodford county, and it was always his intention to have her remains removed to "Glenwillis" for re-interment. With that intention he had erected very near the spot where his own remains now repose a beautiful and expensive monument for the perpetuation of her memory. The inscription is in these words :

ANNA MARIA MARSHALL,

Second daughter of Col. Thomas Marshall, was born the 29th of September, 1759; intermarried with Humphrey Marshall the 18th of September, 1784, and, dying on the 28th of September, 1824, left two sons, her husband, and many friends, to deplore the loss.

To domestic circles she looked for temporal enjoyments; to a Savior and Heaven for eternal happiness.

Her person perfect; her features comely; her mind of the highest order of human intellect; her heart the seat of every virtue.

A high sense of her duties in life, and great fidelity in discharging them were the characteristic traits of her to whose memory this column is erected by her husband. September, 1834.

The remains of Mrs. Marshall were never removed to this spot, but still rest where they were first laid; and no stone of any description has ever been erected to mark the spot where repose the ashes of Humphrey Marshall, who was intrinsically one of the greatest men, in every attribute of true greatness, ever produced in this or any other country, by this or any other age.

Neglected alike by friend and foe, by kith and stranger, his lonely grave, now without enclosure, is trampled level with the surrounding plain by the tread of cattle that roam at will above it. A few more years and the exact location of the grave will be forever lost and forgotten.

In 1888 a bill passed the Kentucky Senate appropriating the sum of

three hundred dollars to defray the expense of removing Mr. Marshall's remains to the State Cemetery, and erecting over them a plain, substantial stone, suitably inscribed. A much larger sum would have been asked for this purpose except for the then recent defalcation, for a large amount, of a high State official, which was supposed to have left the State Treasury depleted. This bill, which passed the Senate, would also have easily passed the Lower House, except for the fact that some of Mr. Marshall's descendants requested the Legislature to allow his ashes to remain undisturbed.


Mr. Marshall's true relation to the times in which he lived are now just beginning to be fully understood by students of Kentucky history. A man much maligned and greatly persecuted he certainly was. Always misrepresented, and probably never understood, he had much to face before which weaker men would have quailed and gone down. But his undaunted heart never for an instant failed him, even under the most trying circumstances. Serene in the consciousness of honest motives and sincere convictions, he never stopped to consider the efficacy of "policy," nor did he ever hesitate from any consideration of personal interest, nor indeed from any consideration whatever, in pursuing the line which, as it appeared to him, *duty* had so plainly marked out.

More pregnant or truer words could not be said of any man who ever lived; and the merited measure of praise and applause which the generations of his own times denied him, the generations of future times will not fail to proudly award him.

THE END.



POSTSCRIPT.~

 HIS work having been printed in much smaller type than was originally intended, is comprised in about 140 pages. If it had been published in the style of the Filson Club series, as was at first designed, it would have made a book of more than 250 pages, as was set forth in the prospectus; but by the change the matter is contained in a handy little volume, substantially and handsomely bound in cloth. The Filson Club publications are printed in large type, have exceedingly wide margins, and are bound in paper covers.

As only a small edition is printed, and the work being more expensive than if it had been printed and bound in the Filson Club style, the price originally set—\$2.50 per copy—is retained.

THE PUBLISHERS.

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